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*Debaters' Handbook Series*

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SELECTED ARTICLES

ON THE

COMPULSORY ARBITRATION AND  
COMPULSORY INVESTIGATION OF  
INDUSTRIAL DISPUTES

COMPILED BY

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## EXPLANATORY NOTE

This volume is compiled according to the general plan of the Debaters' Handbook series, but it differs from other numbers of the series in that it covers two questions. It is the plan of the series to have a separate volume for each question for debate. In this case, however, the two questions are closely related, and much of the literature deals with both, so that it is impracticable to present them in separate volumes and yet impossible to combine them into one question. Compulsory Arbitration as adopted in Kansas and New Zealand is a very different thing from Compulsory Investigation as used in Colorado and Canada. Both are of such general interest and so often discussed and debated that there has been constant demand for a new edition of this volume.

Compulsory Arbitration and Compulsory Investigation are terms that are frequently confused, the former term often being used when the latter is meant. Compulsory Arbitration means a law commanding that differences between employer and employe, which cannot be settled by mutual agreement, be submitted to arbitration, that both parties must comply with the award, and that there may be no cessation of industry by strike or lockout. Compulsory Investigation on the other hand means enforced postponement of a strike or lockout until notice has been given and time allowed for an investigation, the findings of which are to be made public. The former prohibits strikes and lockouts, the latter delays them so as to prevent hasty action on the part of either party and to permit an official investigation, the findings of which shall inform the public as to the nature and merits of the controversy.

This volume contains a full general bibliography revised to the date of this issue, but not separated into affirmative and negative references, because many articles either present both sides of one question, or take up both questions. It also contains briefs and reprints of the best material on both sides of each question.

*June 30, 1920.*

LAMAR T. BEMAN





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# BRIEFS

## COMPULSORY ARBITRATION

RESOLVED, That Capital and Labor should be compelled to settle their disputes in legally established courts of arbitration.

### AFFIRMATIVE

#### Introduction.

- A. The question presupposes the existence of labor disputes.
- B. The Affirmative merely proposes that these disputes be settled by peaceful adjudication in courts of law, as all other disputes are now settled.
- C. We must not lose sight of the fact that in addition to the two antagonists in every labor dispute there is always a great third party, the general public, innocent of any blame but injured by every strike.
- D. The Affirmative does not claim that compulsory industrial arbitration will put an absolute end to all phases of industrial warfare, but we do claim that it will reduce labor disturbances to a minimum, as it has done in New Zealand and in Kansas.
- I. The existing conditions in our industrial system demand ■ remedy.
  - A. There are great evils connected with industrial warfare.
    - i. Mobs, riots and other disturbances of the peace. (McClures 23:43. Report of the Industrial Commission 19:877).
    - (a) The Pullman Car strike 1894.
    - (b) The Boston Police strike 1919 (Current History 11:54).
    - (c) The Anthracite Coal strike 1902.
    - (d) Various street car strikes.
    - (e) Homestead strike 1892.

2. Murder, maiming, and assault (Outlook 78:969 and 98:12).
3. Destruction of property, sabotage.
  - (a) The systematic dynamiting program (Outlook 98:915. McClures 38:347. Harper Encyclopaedia of American History.)
  - (b) The railroad strike of 1877.
  - (c) Coal strike 1894.
  - (d) Denver street car strike of 1920.
4. Infringement and denial of established rights.
  - (a) Interference with free speech.
  - (b) Denial of peaceful assembly (Survey 43:58).
  - (c) Deportation.
  - (d) Importation of strike breakers and slug-gers.
  - (e) Intimidation by pickets and private detec-tives.
5. Boycotts, lasting long after the strike is over. (See publications of the League for Industrial Rights, formerly the American Anti-Boycott Association, 135 Broadway, New York City, and Johns Hopkins University Studies, Series 34, No. 1.)
  - (a) Buck's Stove and Range Co. of St. Louis. (Bulletin U. S. Bureau of Labor 18:124).
  - (b) The Danbury Hatters' Case. (Outlook 110:612. Everybody's 33:121)
  - (c) Duplex Printing Press Co. (Law and Labor 2:26 F. '20).
  - (d) Coronado Coal Co. (Law and Labor 1:5-8 Je. '19.)
6. Blacklisting. (Report of Industrial Commission 19:890).
  - (a) Western Union Telegraph Co. (Bulletin U. S. Bureau of Labor 9:202 Ja. '04)
7. Stoppages and "Striking on the Job".
8. Class hatred engendered.
9. Breakdown of respect for law and order and the courts.

(a) Some labor leaders declare they will not obey a compulsory arbitration or investigation law.

(x) (See Law and Labor 1:23 D. '19)

(y) (See Proceedings of the Academy of Political Science 7:31 Ja. '17)

(z) Several sent to jail in Kansas 1920.

(b) The injunctions of the courts are violated.

(c) Disrespect for property rights.

B. Both parties are injured.

1. Labor by loss of wages. (Report Industrial Commission 17:667. Report Anthracite Coal Commission. Literary Digest 42:295. American Magazine 89:100)

2. Employers, by stoppage of production, destruction of property, and uncertainties in business.

3. Settlement by force does not secure justice.

C. The innocent third party, the general public, is always injured and often suffers more than either antagonist. (Harper's Magazine 131:675. American Magazine 89:9. Outlook 94:517, 114:147, and 123:223)

1. By interruption of service.

(a) Every street car strike causes great inconvenience and expense.

(b) Strikes of telephone operators have disorganized the business of several cities.

(c) Railroad strikes have closed factories for lack of fuel and raw material and have made food very scarce in the great cities.

(d) Drug clerks' strike.

(e) Elevator operators' strikes inconvenienced thousands in New York City, 1920.

(f) New York printers strike, 1919, prevented publication of magazines and books.

2. By causing a shortage in the necessities of life.

(a) The Coal strike 1919 caused untold suffering. (Independent 101:385).

(b) The Milk drivers strike in New York. (Independent 88:139).

(c) The Railroad strikes of 1894 and 1920.

- (d) A concerted determined railroad strike would mean that thousands, perhaps millions, of people in the cities would die of starvation.
- 3. By throwing men out of work.
  - (a) The non-strikers at the plant directly concerned. (McClures 20:325).
  - (b) Employes in allied or dependent industries.
    - (x) Shops have been closed because of lack of fuel. (Coal strike 1919)
    - (y) Shops and factories have been closed or have curtailed their work because of inability to get raw material. (Railway Switchmens strike 1920)
- 4. By general depression of business.
- 5. By decreased production resulting in increased prices.
  - (a) An attempt is always made to make up losses.
  - (b) Every coal strike has been followed by an increase in the price of coal.
  - (c) Milk drivers strikes have been followed by higher prices.
- 6. By destruction of property, all of which is a direct loss to society.
  - (a) There is usually a deliberate destruction of the employers property, called sabotage.
  - (b) There is often great destruction by the rowdy element of the community.
    - (x) Boston Police strike.
  - (c) Sudden strikes and deliberate neglect, as in letting fires go out, boilers run dry, or pipes freeze, often cause a considerable loss.
  - (d) Strikes often cause a great loss in perishable goods.
  - (e) A sort of "gorilla warfare" sometimes continues after a strike is over.
    - (x) In the cases known as "striking on the job."
    - (y) The dynamiting cases in the structural iron industry.



D. The cost to society of industrial warfare is enormous.

1. The Seventeenth Annual report of the U. S. Commissioner of Labor p. 24 places the loss caused by strikes and lockouts from 1881 to 1900 at \$468,968,581.
2. The Statement issued by the U. S. Shipping Board on Dec. 6, 1919, says that the strikes in the first eleven months of that year cost the Board \$37,000,000. This does not include the losses to strikers, to allied industries, and to society.
3. The New York Times (editorial) April 18, 1920 says "In 1919 an incomplete list tabulated losses of wages by strikes of \$723,478,300, and of industrial losses, not labor's, of \$1,266,357,450. This is about a hundred dollars for each family in the United States in one year.

E. Present methods do not afford the desired remedy.

1. Industrial warfare has steadily grown more extensive and more bitter.
  - (a) From 1881 to 1905 there were 38,303 strikes and lockouts in the United States, an average of 1532 a year (21 Annual Report U. S. Commissioner of Labor).
  - (b) In 1916, 1917 and 1918 there were 11,430, an average of 3810 a year. (Monthly Labor Review 8: 1858).
  - (c) "Since the war we have had a perfect carnival of strikes."
  - (d) Industrial unrest has produced increasing uncertainties in business.
  - (e) Strikes are always most frequent in times of prosperity when wages are highest.
2. Voluntary arbitration has failed utterly to settle or prevent strikes and lockouts.
  - (a) Voluntary arbitration is wrong in theory, because boards of this kind lack the power to compel the parties to arbitrate and the power to enforce their awards.
  - (b) Voluntary arbitration has failed in foreign countries. (Bulletin of the Bureau of Labor. 16: 970-7).

- (c) It has failed completely in this country.
  - (s) Many states have not adopted it.
  - (t) Federal laws apply chiefly to transportation industries.
  - (u) In the ten years the law of 1888 was in force, not one arbitration board was organized under its provisions.
  - (v) During the first eight and a half years of the Erdman Act, the arbitration machinery it created was never utilized. (Bulletin, Bureau of Labor 24:1 Ja. '12)
  - (w) During the next six years, although the mediation and conciliation provisions of the Erdman Law were used almost sixty times, the arbitration features of the law were only used four times.
  - (x) The Newlands law has failed to prevent railway strikes, and it failed to prevent the crisis at the time of the threatened railroad strike of 1916, which was prevented only by the passage of the Adamson Act.
  - (y) The Esch-Cummins law failed to prevent or settle the switchmen's strike of 1920.
  - (z) The twenty-first annual report of the Commissioner of Labor states (p. 85) that only one and six-tenths per cent of the strikes in the United States between 1901 and 1905, both years inclusive, were settled by voluntary arbitration.
- 3. Mediation and conciliation have failed to settle the great strikes.
  - 4. Trade agreements presuppose ideal relations between capital and labor.
    - (a) Agreements are often broken by strikes. (Switchmen's strike 1920).
    - (b) Agreements are often broken by "stop-pages" or by "striking on the job."

## II. Compulsory Arbitration offers the desired remedy.

### A. It is sound in theory.

1. Decision by reason is better than decision by force.
2. The public always wants arbitration.
3. The proposed courts would represent all parties: Capital, Labor, and the general public as they do in New Zealand.
4. They will possess two requisites which present boards lack.
  - (a) The power of permitting either contestant to bring the other contestant into court and compel him to arbitrate the dispute.
  - (b) The power of enforcing its decisions.

### B. The welfare of the people demands enforced arbitration.

1. There is no "right to strike."
2. In many strikes the general public suffers more than either contestant. (Outlook. 94: 517-18)
3. Being thus vitally interested the public has a right to demand settlement in a court of justice.

### C. It is the duty of the state to establish these courts. (Forum. 14: 21-5)

1. The primary purpose of government and all public authority is the promotion of peace and public welfare. (Garner—Introduction to Political Science, p. 316. [311-18])
2. The public welfare is involved in all labor disputes.
3. Compulsory Arbitration will reduce labor disputes to a minimum.
  - (a) It has done this in New Zealand and New South Wales.

### D. Compulsory Arbitration will lessen the dangers that threaten our institutions and civilization.

1. From socialism because it guarantees the workers a living wage and continued employment, which is all that socialism can offer.
2. From race suicide.

3. From demagogues or walking delegates or any other outgrowth of discontent.
4. From unreasonable employers.

### III. Compulsory Arbitration is practicable.

A. Compulsory Arbitration has been successful in New Zealand, Australia, Denmark, Norway, Kansas, and in some other places where it has been tried in a partial or limited way.

1. It has benefited capitalists.

(a) In making contracts they can proceed without the fear of a strike or of being compelled to pay unreasonable wages.

(b) Industrial peace and security have drawn capital into the country.

2. It benefits the employees.

(a) They are freed from most of the losses and hardships of strikes.

(b) They have legal rights in regard to their wages.

(c) Industrial justice is also extended to those who are not able to conduct a successful strike.

(d) "Sweating" has been abolished.

3. It benefits the general public.

(a) It is the best guarantee of industrial peace yet devised.

(b) It secures continuous service.

B. Conditions in this country are favorable to adoption of Compulsory Arbitration.

1. The awards can be enforced.

(a) On employers or capitalists by fine or imprisonment.

(b) On employees by

(w) Fines or imprisonment, as is provided in the Kansas law.

(x) The necessity of working.

(y) The removal of the cause of a strike, namely an unsettled difference.

(z) By the force of public opinion.

2. Unjust awards are improbable.



- (a) These courts (as in New Zealand) would be made up of ■ representative of capital, labor, and the general public.
- (b) If conditions make it impossible for an employer to pay any certain wage, it will not be difficult for him to establish that fact in court.
- (c) Working-men do not want or expect a wage higher than an industry can pay.
- (d) A wage is always the result of a compromise and the effect upon industry is the same whether the compromise is brought about by collective bargaining, conciliation or in a court of industrial justice.
- (e) Twenty-five years of experience in New Zealand and Australasia do not reveal a single case of an unjust or unreasonable award.
- (f) Gov. Allen of Kansas has said that decisions of the Industrial court will be so fair that within two years all opposition to the law will cease.

C. It is the natural remedy of the age, the logical next step.

- 1. No better remedy has ever been proposed.
  - (a) The opponents of Compulsory Arbitration content themselves with a purely negative opposition. They all admit the losses and other evil results of strikes, lockouts, boycotts, blacklists, and violence, but they oppose the natural and logical remedy for industrial warfare without offering any other remedy.
- 2. It is in harmony with the spirit of the age.
  - (a) Conservation and efficiency are the watchwords of this generation. Compulsory Arbitration will make for both of these ends.
- 3. It has steadily gained in favor the world over.
  - (a) It has been used for twenty-five years in New Zealand and Australia.

- (b) It has recently been adopted in France, Denmark, Norway, and Kansas, and in a limited form in some other countries.
- (c) It was a feature of the original Cummins railroad bill that passed the United States Senate January 1920.
- (d) It has been declared constitutional by the Supreme Court of the United States. (Wilson vs. New. 243 U. S. 332)
- (e) It has been recommended and endorsed by many of our ablest scholars and statesmen.
  - (v) Senator A. B. Cummins of Iowa
  - (w) William Allen White
  - (x) Gov. Henry J. Allen of Kansas (Current Opinion 68:472, Independent 101:385, Saturday Evening Post Mr. 6, 20, Message to Kansas Legislature)
  - (y) Ex-Gov. Joseph W. Brown of Georgia. (Message to Georgia Legislature June 25, 1913)
  - (z) Judge Gary, Chairman U. S. Steel Corporation. (Iron Trade Review 66:171)
- 4. The extension of the judicial system to adjudicate industrial disputes is the logical and inevitable conclusion.

#### NEGATIVE

#### Introduction.

- A. Meaning of the question.
  - 1. All differences between Capital and Labor to be settled in this manner.
  - 2. Either party or the court itself may take the initiative.
  - 3. Special courts are to be established.
  - 4. The courts are to be given power to compel both parties to submit to arbitration and to accept the award.
- B. The Negative will show.
  - 1. Compulsory Arbitration is unnecessary.
  - 2. It is unwise and undesirable.
  - 3. It is impracticable.

I. Compulsory Arbitration is unnecessary.

A. Strikes are not a sufficient necessity.

1. Less than 4 per cent of the men engaged in industry are involved in strikes annually. (Report of the Industrial Commission. 17:CXXIX)
2. Only 1 work day in 500 lost in strikes, 1/5 of one per cent.
3. Average length of a strike is 25.4 days. (Twenty-First Annual Report of the Commissioner of Labor, p. 46)
4. There is no danger to our institutions in strikes.  
(a) Losses are small proportionally, 1/500 part in time.
5. Strikes are not increasing as fast as the population of the country (Adams and Sumner, Labor Problems, eighth edition p. 179)

B. There are now strong factors making for industrial peace.

1. Employe representation in management, with shop adjustment councils and impartial boards of appeal. (Report of the Industrial Conference 1920; Bloomfield, Modern industrial movements, Basset, When the workmen help you manage; Atlantic Monthly 117:12 and Survey 35:72 and 143.)
  - (a) It is sound in principle.
    - (w) It is preventive, not curative.
    - (x) It applies the principle of stoppage at source.
    - (y) It develops good feeling and mutual confidence and understanding between employer and employe.
    - (z) It gives labor a voice in the conduct of the business, which develops a feeling of responsibility.
  - (b) It has worked well in practice.
    - (x) It has very largely removed the causes of misunderstanding and suspicion. (Tailoring Industry in Chicago).
    - (y) It has reduced labor unrest to a minimum. (Case of Colorado Fuel & Iron Co.)

2. Voluntary arbitration under the Newlands and Esch-Cummins Acts, and through state, local and unofficial boards.
  - (a) Twice as many disputes, involving five times as many men, are settled each year by voluntary arbitration in New York City alone, as have been settled under the Canadian Industrial Disputes Investigation Act in the nine years of that law. (Review of Reviews. 55:190)
3. Mediation and Conciliation.
4. Trade agreements and collective bargaining.
5. Intelligent public opinion as is provided for in the Esch-Cummins law.

## II. Compulsory Arbitration is unwise and undesirable.

### A. It is un-American.

1. Destroys individual liberty.
  - (a) Of employer—to employ whom he pleases.
  - (b) Of employe—involuntary servitude.
2. Destroys right of free contract.
  - (a) Employer and employe are forced to become parties to a contract to which neither agrees or has given his consent.
  - (b) Capital and labor are not partners, but stand in the relation of buyer and seller, and should be free to act as such.
3. It gives the Industrial Courts too great powers.
  - (a) One body would be exercising legislative, executive, and judicial powers.
  - (b) The court can take up a case on its own initiative, although neither party has appealed to it or wants its judgment.
4. It is unconstitutional. (Peters. Labor and Capital. p. 281).
  - (a) It has been so held by the courts.
    - (x) State vs. Ryan, 182 Mo. 349.
    - (y) State vs. Johnson, 61 Kan. 803.
  - (b) It is in violation of the part of the Constitution relating to the obligation of contract. (Article 1, Section 10:1)

- (c) It is in violation of the Seventh Amendment which provides for trial by jury.
- (d) It is in violation of the Thirteenth Amendment for it would be involuntary servitude. (Hodges vs. U. S., 203 U. S. 1, and American Federationist 23:929 and 26:1046)
- (e) The decision in the case of Wilson vs. New, (243 U.S. 332) cannot be considered as establishing the law finally on this point. (Proceedings of Academy of Political Science 7:44-80. Survey 37:737. Railway Age Gazette 62:612. Review of Reviews 55:526).
- (x) The District Court had held to the contrary.
- (y) The Supreme Court reached its decision by a vote of five to four. (See Dissenting Opinions).
- (z) The decision applies only to industries "charged with a public interest."

B. It is wrong in principle.

- 1. It comes into play after the dispute has embittered the parties.
- 2. It is curative, not preventive.
- 3. It does not employ the principle of stoppage at source.
- 4. It makes criminals out of men who are only trying to better their condition.

C. It is unjust to employers.

- 1. Employers have property and are more easily reached by the courts. In New Zealand only licensed unions can be made a party to a suit. Working-men may act as individuals and keep out of reach of the courts, but employers could not.
- 2. These courts could not prevent a secret boycott which hurts employers seriously.
- 3. It would make conditions of competition unfair among employers.
- 4. It would destroy freedom of contract.
- 5. It would increase cost of production and drive capital out of the country.

- D. Unfair to employees. (Le Rossignol and Stewart. *State Socialism in New Zealand*, p. 243)
1. It would be involuntary servitude.
  2. It would weaken labor unions, if not destroy their usefulness.
  3. It would encourage increased disrespect for law and the judiciary.
  4. It would increase the cost of living. (Le Rossignol and Stewart. *State Socialism in New Zealand*, p. 244)
  5. It would be an injury to inefficient workmen. (Le Rossignol and Stewart, p. 232)
  6. It would take away from labor its only weapon, and leave it unarmed to fight organized capital.
- E. It would destroy present methods of securing industrial peace.
1. Management Sharing and Shop Councils where capital and labor meet as friends, would be completely ended.
  2. Voluntary arbitration, mediation, and conciliation, which require good will and mutual confidence would give way as they have in New Zealand.
  3. Trade agreements would be less useful.
  4. Public opinion would be entirely eliminated.
  5. It would widen the gulf between capital and labor.
- F. It is too great an experiment.
1. Too great a change from existing methods. (Ely. *Outlines of Economics*. p. 405)
    - (a) There is nothing in our system of government or industry preliminary to it.
    - (b) Anglo-Saxon institutions are always a gradual growth; evolution, not revolution.
    - (c) Drastic legislation is seldom good legislation.
  2. On too large a scale.
    - (a) Too large territory.
    - (b) Too much capital involved.
    - (c) Too many industries.
    - (d) Too many courts required, too great in expense.
    - (e) Too great variety of conditions.



3. Experiments should always be tried on a small scale.

### III. Compulsory Arbitration is impracticable.

#### A. The system has failed wherever it has been tried.

##### 1. In New Zealand.

- (a) 169 strikes have occurred in the first 25 years after its adoption. (Research Report no. 23, National Industrial Conference Board p. 31).
- (b) Courts have been unable to enforce their awards.
- (c) No permanent good results have been shown.
- (d) There is general dissatisfaction. Prosperity since 1895 not due to Compulsory Arbitration. (Reeves. State Experiments in Australia and New Zealand. Vol. II. p. 162)
- (e) Conciliation is gradually superceding Compulsory Arbitration. (Research Report No. 23, National Industrial Conference Board, p. 28)

##### 2. In Australia.

- (a) Frequent strikes have occurred.
- (b) The courts have been unable to enforce their awards.
- (c) It has caused disrespect for the courts, and for law and authority.
- (d) It has made industrial warfare more bitter.
- (e) In West Australia the system has been abandoned.

##### 3. In Kansas.

- (a) The Coal miners struck in protest the day after its adoption.
- (b) Union leaders refused to recognize the law and were sent to jail.
- (c) Organized labor has been advised to move out and to stay out of the state.
- (d) The feeling between Capital and Labor has grown more bitter.

B. Even if Compulsory Arbitration has been successful in the South Sea Islands that fact would prove nothing for the United States because conditions are so very different. (Research Report No. 23, National Industrial Conference Board p. 3).

1. In size.

(a) New Zealand is smaller in area than Colorado.

(b) It has about 1,000,000 people, less than one per cent of the population of the U.S.

2. In development.

(a) New Zealand has very little modern industry.

(b) Only 80,000 persons employed in factories.

(c) There were only four strikes in the two years before the experiment was begun.

(d) Population is homogenous—98 per cent of the white population is of British blood.

(e) Conditions are the same throughout the two small islands of New Zealand, but are very different in the different sections of our vast country.

3. Form of government.

(a) United States is a decentralized or federal government while New Zealand is highly centralized.

(b) Non-interference with personal liberty has always been the American principle, while New Zealand is the land of fads and "isms." They have government railroads, telegraphs, telephones, gas-plants, electric plants, government insurance, government mines and factories.

(c) In New Zealand the "invisible government" is pro-labor.

C. If it should be very successful in Kansas, that fact would prove nothing for the other states.

1. Kansas is an agricultural state.

2. It has very little industry.

3. Union men make a very small part of the voting population.

- D. Conditions here are unfavorable to the experiment.
1. Federal form of government; there must be national and state courts.
  2. Distrust of the courts by workingmen. (Industrial Commission 14:46, Monthly Labor Review 10:337-45)
- E. Compulsory Arbitration could not be made to work out here.
1. Awards could not be enforced on either employers or employees, nor their sympathizers.
    - (a) How could any court compel a million men to resume work if they refused to do so?
      - (x) By fines? How collect them? It is doubtful whether the courts could reach the union treasury. It would not be practicable to fine each workman separately. In either case it is doubtful whether the fine could be collected. (Reconstruction 2:150)
      - (y) By imprisonment? How imprison the great number involved in any of the great strikes. There are not enough jails and penitentiaries to hold them.
      - (z) Mandatory Injunction proceedings in the Federal Courts failed to end the bituminous coal strike of 1919.
    - (b) The great corporations could not be compelled to obey an award.
      - (x) They would prolong litigation until the resources of the unions were exhausted.
      - (y) They would flood the industrial courts with petty cases until they were years behind in their docket, as has been done in Australia and New Zealand.
  2. It is open to too great abuses.
    - (a) Politics will influence the courts.
    - (b) Judges are often financially interested.
  3. Impossible to get a just decision.
    - (a) Courts would have to decide what is a fair wage in each separate trade, or a minimum wage as in done in New Zealand.

- (b) A fair wage or fair minimum wage in a small town would not be fair in New York City or Boston, for the cost of living is higher in the latter place.
- F. There is general public opposition and distrust. (Report of the Industrial Commission. XIX:861)
  - 1. Opposed by workingmen. (Report of the Industrial Commission IV:762 and 764 and files of the American Federationist).
  - 2. Employers also oppose it.
  - 3. Scholars and statesmen are opposed to it.
    - (a) Carroll D. Wright, late Commissioner of Labor. (Forum. 15:323-31)
    - (b) President Hadley of Yale.
    - (c) Charles Francis Adams.
    - (d) Prof. John R. Commons (American Federationist 24:25)
    - (e) William J. Bryan (Commoner 20:3 Ja. '20)

## COMPULSORY INVESTIGATION<sup>1</sup>

RESOLVED, That Strikes and Lockouts should be prohibited by law until investigation of the differences between employer and employees has been made by an official body having power to summon witnesses, to administer oath, and to compel the production of the books and records of the parties, and until the findings of this body have been published.

### AFFIRMATIVE

#### Introduction

- A. In the case of food supply, coal, clothing, and all public utilities, or industries affected with a public interest, the general welfare demands uninterrupted service.
  - B. The Affirmative is not proposing to make strikes and lockouts unlawful, but merely claiming that the dispute must first be investigated, and the findings of the tribunal published. It is then left to public opinion to enforce the award, the parties still having the right to call a strike or lockout.
- I. Existing conditions in the industrial relations demand ■ remedy.
- A. There are great evils connected with industrial warfare.
  - B. Both parties are injured.
  - C. The general public is always injured, sometimes more than either antagonist.
  - D. Present methods do not afford a satisfactory remedy.
- II. Compulsory Investigation offers the desired remedy.
- A It is sound in theory.
    - i. Compulsory Investigation will create an intelligent and fair public opinion.

<sup>1</sup> This Brief may be elaborated by referring to the corresponding points in the previous brief.

2. It does not take away the ultimate rights of either employer or employee, nor compel them to accept the award.
  - B. The welfare of the people demands an intelligent public opinion.
  - C. It is the duty of the state to investigate the differences between employer and employee and to publish the findings.
    1. Only in this way can an intelligent public opinion be created.
  - D. Compulsory Investigation will lessen the dangers that threaten our institutions.
- III. Compulsory Investigation is practicable.
- A. It has been very successful wherever tried.
    1. In Canada it has been a success since 1907.
      - (a) During the first twelve years of the law there were only 24 strikes within the scope of the Act that were not "averted or settled."
    2. In Colorado it has been successfully tried after that state had been torn by industrial warfare for several years. (Monthly Labor Review 10: 810-11 Mr. '20)
    3. It has been successfully used in Denmark, Norway and New Zealand.
  - B. Conditions in this country generally are favorable to its adoption here.
  - C. It is the natural remedy of the age, the logical next step.
    1. No better remedy has ever been proposed.
    2. It is in harmony with the spirit of the age.
    3. It has steadily grown in favor.
      - (a) It has recently been adopted in Colorado, Norway, Denmark and New Zealand.
      - (b) It has been recommended by many of our ablest scholars and statesmen.
        - (w) Hon. William L. McKenzie King, author of the Canadian law.
        - (x) President Wilson recommended it to Congress in his addresses on Aug. 29, 1916 and Dec. 5, 1916).



- (y) William J. Bryan (Commoner 20:3 Ja. '20)
- (z) Charles Francis Adams. (Report on the Anthracite Coal Strike, 1903)
- (c) It has never been abandoned by any country that has adopted it.
- (d) The Transportation Act of 1920 is a decided step forward.

## NEGATIVE

## Introduction.

A. The plan here proposed can do very little towards lessening industrial warfare.

1. It cannot prevent interruption of service.

(a) Strikes will occur in violation of the law, as they have in Canada.

(b) Strikes are lawful after the period reserved for investigation.

I. Compulsory Investigation is unnecessary.

A. Strikes are not a sufficient necessity.

B. There are now strong factors making for industrial peace.

II. Compulsory Investigation is unwise and undesirable.

A. It is wrong in principle.

B. It is unjust to employers in many cases.

1. Employees will take advantage of the law to file grievances that would not be presented except for the Investigation Law.

C. It is often unfair to employees.

1. The delay will give employers the advantage.

D. It would destroy present methods of securing industrial peace.

E. It is too great an experiment.

III. Compulsory Investigation is impracticable.

A. It has failed wherever tried.

1. In Canada. (Bulletin 233 U.S. Bureau of Labor Statistics; Review of Reviews 55:190)

(a) It applies to only an insignificantly small part of the industrial disputes of the Dominion.

- (b) There were 204 illegal and 18 legal strikes and lockouts during the first ten years of the law.
  - (c) No permanent beneficial results have been attained.
- 2. In Colorado (Monthly Labor Review 10:810-11 Ap. '20)
  - (a) Strikes have occurred in violation of the law.
  - (b) Industrial conditions have not been permanently improved.
- B. Even if it had been successful in Canada, that fact would prove nothing for the United States because of the difference in industrial conditions.
  - 1. Canada has fewer people than New York City and Chicago.
  - 2. Canada is sparsely settled, has but few large cities, and but little modern industry.
- C. Conditions here are unfavorable to the experiment.
- D. Compulsory Investigation could not be made to work out here.
  - 1. Awards could not be enforced.
    - (a) They have not been enforced in Canada, where there have been thousands of violations of the law and only 23 prosecutions.
    - (b) American labor leaders openly declare they will not obey the law if it is adopted.
- E. There is general public opposition and distrust.
  - 1. Employers oppose it.
  - 2. Workingmen are against it. (See files of American Federationist, Literary Digest 53:1581)
  - 3. The majority of scholars and statesmen are opposed to it.

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# COMPULSORY ARBITRATION AND COMPULSORY INVESTIGATION OF INDUSTRIAL DISPUTES

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## INTRODUCTION

President McKinley once said that so long as there have been Capital and Labor, there have been strikes. In recent years, as Capital and Labor have become better organized and more centralized and as industry has developed and life become more complex, strikes have frequently been greater in extent, involving more workmen and causing greater loss to both Capital and Labor and greater inconvenience and suffering to the general public. More than this, the official statistics compiled at Washington show that strikes and lockouts are increasing. The Twenty First Annual Report of the United States Commissioner of Labor (p. 85) says that voluntary arbitration has resulted in the settlement of only 1.6 per cent of the strikes and 2.3 per cent of the lockouts between 1901 and 1905 inclusive. When boards of voluntary arbitration have offered their services to adjust differences between Capital and Labor, they have frequently received no more satisfaction than to learn that one party or the other either had "nothing to arbitrate," or considered their differences "a well established principle of human welfare, a principle that cannot be disputed and therefore is not properly a matter for arbitration." Sometimes such boards have been further enlightened by being informed that this position did not mean that the party in question had "rejected the principle of arbitration."

The year and a half that have elapsed since the close of the world war have been a period of great industrial unrest, world wide in extent. In Europe, America, Australia, Japan and elsewhere, there have been industrial wars and rumors

of war, strikes and threats of strikes. In this country there has been, as Senator Thomas said, a "perfect carnival of strikes," some extensive in scope, such as that of the coal miners and the steel workers, and some that were smaller but have caused very great inconvenience to the people of the community concerned, such as strikes of the street car men, drug clerks, telephone operators and elevator operators. Some strikes have effected the country at large though comparatively few men went out, as was the case of the railroad switchmen, the expressmen, the New York printers, and the longshoremens. There have been some unusual strikes, such as that of the actors in New York City, of the clerks in the Chicago City Hall, of the Policemen in Boston and Cincinnati, and of the City Firemen in several cities. There have been sympathetic strikes, general strikes and outlaw strikes. In England there was a serious railroad strike, in Spain a medical strike, in France and Italy a general strike, and in Japan several strikes in true western style, with riots and sabotage.

So great are the losses and inconveniences resulting from industrial warfare, so bitter are the animosities it engenders, and so serious the element of uncertainty it injects into business, that scholars and statesmen have long sought a more efficient remedy than mediation, conciliation and voluntary arbitration. In 1894 New Zealand adopted compulsory industrial arbitration as a result of the strike of the Seamen's Union which disorganized the trade of the islands. This law applies only to registered unions, and there is no penalty for failing to register, but among the registered unions, both during a hearing by a Council of Conciliation or a Court of Arbitration, and after an award of agreement has been made, strikes and lockouts are illegal and may be punished by a fine. Even a gift of money to help the strikers is prohibited and is punishable in the same way. The system was soon afterwards adopted in the Commonwealth of Australia and in several of the individual states of that Commonwealth. At first it worked with a considerable measure of success in both countries, though it is true that the laws have been frequently amended and that the later results seem much less favorable than those of the earlier years.

The Dominion of Canada under the leadership of Hon.

William L. Mackenzie King, adopted the "Industrial Disputes Investigation Act" in 1907, after a prolonged coal strike had seriously interfered with industry and public comfort and had directed attention to the evils of industrial warfare. Although this law is entitled "An Act to aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries connected with Public Utilities", and although many of its advocates are always emphatic in stating that it is not compulsory arbitration, the act provides that a strike or lockout in the industries within its scope shall be illegal until the dispute has been investigated and reported upon by an official board appointed for the purpose. This law, therefore, ought to be called the "Compulsory Delay, Investigation, and Publicity Act," but this system is usually referred to "Compulsory Investigation" as distinguished from Compulsory Arbitration. Some of the opponents of the law in Canada call it the "Parade Act," because of its publicity features.

The Canadian Industrial Disputes Investigation Act applies only to mines and public utilities, including railways and shipping, but other industries may be brought within its scope by agreement of both parties to the dispute. Unlike the New Zealand law, the awards are not binding upon either party, nor is a strike or lockout illegal after the findings of the board have been published, the law leaving it to public opinion to enforce the awards.

In 1910 Denmark adopted a limited form of Compulsory Arbitration similar to the New Zealand system. In the same year ■ similar bill was introduced in Norway. This bill was changed to provide the Canadian form of Compulsory Investigation and was adopted in 1915. The next year, however, a bill providing for a limited form of the New Zealand system was adopted by Norway, but it also contained the provision that it should last only as long as the European war. The Canadian plan of Compulsory Investigation was adopted by the State of Colorado in 1915. The Canadian system was also adopted in New Zealand in 1913 to apply only to the unions which were not registered and therefore did not come under the Compulsory Arbitration Law of 1894. In 1917 the New Zealand system was adopted in France by a decree of the Minister of Munitions but it applies only to those establishments that are engaged in the manufacture of "armaments, munitions, and war materials."

In January 1920 the Legislature of Kansas in special session adopted the recommendation of Governor Allen and passed the first Compulsory Industrial Arbitration law in America, creating a state Court of Industrial Relations composed of three judges appointed by the governor. The law does not cover all industrial disputes, but applies only to those industries declared to be "affected with a public use." Such industries include the manufacture of food and clothing, the mining of fuel, the transportation of food, clothing, and fuel, and all public utilities and common carriers. The Court of Industrial Relations is given power to "settle and adjust all controversies," and may proceed upon its own initiative, or upon the complaint of either party, or of ten taxpayers, or of the Attorney General of the state. Strikes and lockouts are prohibited in industries within the scope of the act. In any case where production ceases the state may take over the industry and operate it. Any person violating the law or any order of the court may be punished by a fine of one thousand dollars, or imprisonment in jail for one year, or both fine and imprisonment. Any officer of a corporation, employer of labor, or officer of a labor union, who uses his position to get others to violate the law or any order of the court may be fined five thousand dollars, or imprisoned in the penitentiary at hard labor for two years, or both such fine and imprisonment.

In none of the above mentioned countries have strikes and lockouts been entirely prevented nor is it claimed by the advocates of either system that more can be done than to reduce industrial warfare to a minimum. While there is no "land without strikes," many persons believe that labor troubles have been greatly reduced under each of these systems. In Canada there were 222 strikes in industries within the scope of the Industrial Disputes Investigation Act during the first ten years of the law, 204 of which were illegal. The official figures, on the other hand, show that during the first twelve years of the law, 374 applications were filed, 287 boards granted, and only 24 strikes "not averted or settled." In New Zealand there were no strikes or lockouts during the first twelve years (1894-1905) of Compulsory Industrial Arbitration, but there were 169 strikes and lockouts during the thirteen years that followed. While strikes have occurred in violation of all of these laws, there have been but few prosecutions for such violation. This is particularly true in Canada.



In the United States a law providing for voluntary arbitration was passed by Congress in 1888. It applied to any controversy between a railroad or other transportation company engaged in interstate commerce and any class of its employees which might "hinder, impede, obstruct, interrupt, or affect such transportation of property or passengers." The law provided that either party might propose in writing to submit the differences to arbitration, and if the other party should accept the proposition, each side should select one arbitrator and the two should select a third. These three persons made up the Board of Arbitration. There was also a provision that each of the arbitrators selected by the parties should be impartial and disinterested, but no provision was made for selecting the third arbitrator if the two failed to agree upon one. A Board, once created under this law, had power to administer oaths, subpoena witnesses, require the production of records, etc. but no provision was made for enforcing the awards. The law also provided that in any controversy, when the parties might create an Arbitration Board, the President, of his own initiative, might select two Commissioners, who, with the Commissioner of Labor, should constitute a temporary commission, with powers similar to a Board of Arbitration, for the purpose of examining the causes of the controversy.

No Arbitration Board was ever created under the Act of 1888, and only one Commission, which was appointed in July 1894, a month after the beginning of the strike at the Pullman Car shops. This Commission did not settle the strikes that led to its creation, but it made a recommending for a permanent strike commission, with more drastic powers of investigation and recommendation. The sympathetic railroad strike growing out of the Pullman strike was a bitter and violent industrial war that interfered with the carrying of the mail and threatened the cities with starvation. The final result was the passage of the Erdman Act, approved June 1st 1898, which superceded the act of 1888.

The Erdman Act applied only to controversies between interstate carriers and those of their employees who were "actually engaged in train operation or train service." It provided for government mediation and conciliation if either of the parties should request it, and for arbitration if both parties requested and agreed to it in writing, each naming



an arbitrator, and these two selecting the third. This Board had power to subpoena witnesses, administer oaths, require the testimony of witnesses and production of books, papers, contracts, agreements and records. Its awards were to be "valid and binding" upon both parties, but no employe was to be "compelled to render personal service without his consent."

No very serious railroad strike occurred on an interstate railroad for more than twenty years after the passage of this law and some people have concluded that the law was very successful. There was only one attempt to utilize the provisions of the Erdman Act during the first eight and a half years of its existence, and this one attempt resulted in a complete failure. In the six years that followed the act was resorted to in about sixty cases, but in only four of these were the arbitration features of the law employed. A threatened strike of the Brotherhood of Locomotive Engineers of the eastern railroads in 1912 was settled by arbitration outside of the provisions of the Erdman Act, and the Board of Arbitration that settled the matter recommended the adoption of compulsory arbitration of the disputes between railways and their employes.

On July 15, 1913, the Newlands Act was adopted. This amends the Erdman Act which provided for a Board of three, one representing the employers, one of the employees, and a third chosen by these two. Under the Newlands Act the Board may consist of three or six as the interested parties may desire. If a Board of six is decided upon each of the parties to the controversy selects two representatives and these four select the remaining two. The Newlands Act also provides for a Board of Mediation and Conciliation, and this Board selects the neutral member or members of an Arbitration Board if the representatives of the interested parties fail to do so within five days where it is a Board of three or within fifteen days where it is to be a Board of six. If either party refuses to agree to arbitration, then the other party may apply to the Board of Mediation and Conciliation and in cases where an interruption of traffic is imminent, this Board may act on its own initiative, but in either case, it only acts as a Board of mediation and conciliation. In other words, there are no compulsory features embodied in the Newlands Act.

In 1916 after a strike had been voted by the employees of the American railroads who, refusing to arbitrate the matter, had made a demand for an eight hour day without any decrease in pay which the officials of the roads had refused to grant, President Wilson in an address to Congress recommended the adoption of "A provision making illegal any railroad strike or lockout, prior to the investigation of the merits of the case," or, in other words, the adoption of the Canadian system of Compulsory Investigation as regards disputes between Railroad officials and their employees. This recommendation the President "very earnestly renewed" in his annual address to Congress on December 5, 1916, but Congress did not enact such legislation.

Congress did yield to the demands of the railway employees for an eight hour day, and passed what is known as the Adamson Act, the constitutionality of which came before the Supreme Court in the case of *Wilson vs. New*, and was decided on March 19, 1917. (243 U.S 332). By vote of five to four the court held that Congress had "Authority under the circumstances to compulsorily arbitrate the dispute between the parties by establishing as to the subject matter of that dispute a legislative standard of wages operative and binding as a matter of law upon the parties,—a power none the less efficaciously exerted because exercised by direct legislative act."

On March 1, 1920 the railroads of the country were returned to their owners in accordance with the provisions of the Transportation Act of 1920, (the Esch-Cummins law). The original Cummins bill as passed by the Senate in December, 1919 contained a provision for the Compulsory Arbitration of all labor disputes between the railroads and their employees, but the House of Representatives refused to concur in this provision and it was eliminated in the joint conference. The Transportation Act includes a plan for the conciliation and arbitration of labor disputes. It provides for local Adjustment Boards and a national Labor Board composed of nine members appointed by the President subject to the approval of the Senate. Three members of this Board represent the railway employees and are selected by the President from a list of at least six names submitted to him by the representatives of the railways in such manner as the Interstate Commerce Commission may prescribe. Three represent the railway owners and are selected in a similar manner. The other three represent the public and are selected by the President without previous nom-

ination. The Labor Board deals primarily with appeals from the decisions of local Adjustment Boards, but it also has powers of original initiative. Strikes are not made illegal pending an investigation by the Labor Board or an Adjustment Board, nor is any award or decision of either made obligatory on the parties. The Labor Board, however, has full power to investigate any and every dispute, to compel the attendance and testimony of witnesses, and it can examine the books and records of the parties, thus assuring full publicity.

The report of the (second) Industrial Conference called by the President (March 6th 1920) gives a plan designed to reduce to a minimum the interference with industry caused by strikes and labor unrest. It declares "Prevention of Disputes is worth more than Cure," and recommends "Employee Representation" saying "Employees need an established channel of expression and an opportunity for responsible consultation on matters which affect them in their relations with their employers and their work. There must be diffused among them a better knowledge of the industry as a whole and of their own relation to its success. Employee Representation will not only enable them better to advance their own interests, but will make them more definitely conscious of their own contribution and their own responsibilities." The report also suggests a plan of machinery to adjust disputes in general industry by conference, conciliation, inquiry and arbitration. The plan discards compulsory arbitration and the prohibition of strikes pending an investigation, but proposes a National Industrial Board, Regional Adjustment Conferences, and Boards of Inquiry. The worst penalty suggested is publicity, but the report does recommend that Regional Boards of Inquiry be given power to subpoena witnesses, to examine them under oath, and to require the production of books and papers.

The last forty years have witnessed fundamental changes in our industrial system. During the earlier part of this period most of our basic industries were consolidated into giant corporations. During the latter part of the period the national and local labor unions have merged into one giant federation. The American Federation of Labor was organized in 1881 (though not taking its present name until five years later) with about a quarter of a million members. By 1900 it had doubled its membership, then having over a half million members. Its membership was tripled in the next decade, giving it over a million and

a half in 1910. Since that time it has again doubled its membership, reporting on April 30, 1919 a membership of over three and a quarter millions with forty-six state federations, 816 city central bodies, 111 national and international unions, and 33,852 local unions. At the present time (May, 1920) its membership is over four million.

Today both Capital and Labor are highly organized for industrial warfare. Both organized employers and employes have treasuries with reserve funds for war emergencies and both are fighting with propaganda. Thirty or forty years ago Capital looked with little favor upon Compulsory Arbitration, but several of the prominent labor leaders favored its adoption. Now employers are looking upon Compulsory Arbitration more favorably, but the leaders of organized labor in this country are almost unanimous in their opposition both to Compulsory Arbitration and to Compulsory Investigation. They hold that either plan would be a violation of the rights of the working classes, that either plan takes away from labor its only weapon and leaves it unarmed to fight organized capital, and that either plan would produce a condition of involuntary servitude prohibited by the thirteenth amendment to the Federal Constitution. They insist that the working men have a long established and well recognized "right to strike."

The existence of this right was denied by representatives of four large farmers organizations in a memorial drawn up on February 11, 1920 and addressed to Congress. These organizations were the National Grange, the American Bureau Federation, the Cotton States Board, and the Association of State Farmers' Unions. The memorial says, in part, "Those who believe labor has an inherent right to organize a strike, believe that such organizations have a right to starve the people of the cities to death on the one hand, and to destroy the property of the farmers on the other. No such right has ever existed and no such right exists now. It is economically unsound and the American people can and will work out some other method for the settlement of such controversies. No set of men has ever had the moral or legal right to destroy property or cause suffering by conspiring together, and the welfare of the people must ever remain superior to that of any class or group of people."

A middle ground on this point is taken by Hon. Elihu Root in suggesting a policy to be embodied in the Republican National platform, according to the *World's Work* (39:531.) He is

quoted as saying "We should not attempt to take away the right to strike. It is labor's great protection. But we should by law limit the right to strike at the point where it comes in conflict with the communities' higher right to self protection. No man and no set of men can justly claim the right to undertake the performance of a service upon which the health and life of others depends, and then to abandon the service at will. The line between such a performance and an ordinary strike should be drawn by law."

A similar statement is embodied in the "Declaration of the Cleveland Chamber of Commerce" (Survey 43:749, Mr. 13 '20) from which we read, "The Employes' right to strike and the employers' right to lockout his employes are both secondary to the public's right to service. In essential industries, government services, and public utilities prompt settlement of disputes should be effected by the efforts of both parties. The public's right to uninterrupted service during the period of settlement is a primary consideration."

The "right to strike" is denied, and compulsory arbitration is endorsed by many of our prominent scholars and statesmen. Among this number are Governor Henry J. Allen of Kansas, Ex-Gov. Joseph W. Brown of Georgia, William Allen White, Senator A. B. Cummins, and a majority of the Senators in the Sixty-sixth Congress. Compulsory Investigation has been endorsed by President Wilson, William J. Bryan, Hon. William L. McKenzie King, of Canada, Hon. G. D. Robertson, the Minister of Labor in Canada, and many others. Judge Curran of Kansas has said (Outlook 125:58) "The divine right to strike where it affects the health and welfare of the public must be relegated to the realm where the divine right of kings has been sent."

There is one point upon which almost everybody seems to agree, that strikes and lockouts are a bad thing, that they cause losses to both antagonists as well as loss and suffering to innocent people, and are to be avoided whenever possible. While very few will defend modern industrial warfare, and weak is their attempt, yet it goes on and will go on for generations after this in spite of the fact that one United States Senator has said on the floor of the Senate [December 18, 1919] that he would give his "very soul and go down damned through all eternity" to "fix some scheme whereby men in their personal and international and industrial relations would submit to reason rather than passion."

LAMAR T. BEMAN

PART I  
INDUSTRIAL WARFARE

Much of the material in Part One is ex parte, the utterances of interested parties in the industrial conflict. It is our desire to present both sides as fully and fairly as is possible in the limited space at our command. Any debate or discussion of Compulsory Arbitration or Compulsory Investigation must have as a foundation a knowledge of Industrial Warfare.



## STRIKES<sup>1</sup>

### *Definition*

Strikes are concerted cessations of work by wage-earners, designed to coerce their employers into compliance with their demands, during which efforts are made to keep other workmen from filling the places temporarily vacated. The improvement or the maintenance of the existing conditions of employment is the usual question at issue in strikes, though many are called to secure recognition of the unions, and many are sympathetic strikes. The public always associates strikes with trade unions, but about a third of the strikes of the last thirty years were started by men belonging to no labor organization. Generally labor unions later have entered the field to direct and support these strikes of the unorganized.

The strikes begun by labor organizations generally find their initiative in the local unions directly involved. In many unions the vote of more than a majority of the members of the locals particularly affected is required to authorize any strike even if not local. To secure financial support from the general union treasury, strikes must have the sanction, also, of the officers of the national organization. Only in the building trades do the local union officials have the power to call strikes on their own initiative.

Strikes duly authorized are generally conducted under the direction of a representative of the national union, co-operating with committees of the local directly involved.

### *Strike Benefits*

To the men on strike, weekly payments of a certain amount are made, and sometimes milk, clothing and groceries are furnished directly. Workmen not belonging to the union, if they join in the strike, receive the same benefits as do the union members.

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<sup>1</sup> *Cyclopedia of American Government*, vol. 3, p. 436-8.

Unions are able to pay these strike benefits because they collect funds for these emergencies in times of peace, and during strikes, unions frequently levy special assessments for their support upon the members who are employed. Contributions are also solicited from other unions and from the general public. When unions can no longer financially support a strike, it is almost sure to collapse.

### *Strike-Breakers*

In most strikes employers are not content simply to close their factories. To defeat the striking workmen in their demands, it is necessary to show that the factory can be operated without them. This necessitates getting new workmen, either from among the unemployed, or from professional strike-breakers. In large cities, agencies exist which stand ready to supply strike-breakers, and the armed guards necessary for their protection.

To the strikers it is all important that their places shall not be filled by other workmen. To turn back those whom the employer has secured, the strikers institute picketing (see). Peaceful picketing is frequently effective in inducing workmen who have been secured by the employer through ignorance of the existence of a strike to turn back, sometimes by paying their transportation expenses.

### *Violence in Strikes*

When peaceful methods fail to prevent the employer's filling their places, strikers resort at times to acts of violence. Non-union workmen are threatened and even assaulted, and efforts are made to destroy the employer's property. In the United States protection to employers against acts of violence has been far less efficient than in Europe. Because of the political power of the wage-earners, local officials have sometimes been unwilling to prosecute strikers who violate the law. Even where the state militia has been called in, violence has not always been checked. Upon only a few occasions have federal troops figured in strikes.

Because of the inadequacy of police protection, employers frequently hire armed guards to conduct workmen to and from the factory to their lodging-houses, and to protect them while

at work. Sometimes these squads have been given commissions as deputy sheriffs, with power to make arrests.

### *Sympathetic Strikes and Boycotts*

Workmen in the same industry by continuing to work help to defeat the men who are out on strike. Not infrequently the employer transfers a part of his orders to other factories. Sympathetic strikes in these factories are then called by the union. In a sympathetic strike, strictly speaking, the sympathising union strikes to help another union, but without a direct grievance or demand of its own. The sympathetic strikes of most common occurrence take place in the building trades. The members of as many as twenty unions are frequently employed upon the same building; only through sympathetic strikes can these act together to bring work to a standstill. All told, less than five per cent of all strikes are sympathetic.

Labor union men in other industries seldom give aid to strikers through sympathetic strikes. The chief manner in which they aid strikes is through their refusal to purchase from dealers the products manufactured by the employers involved in the strike and by their contributions through their unions. Almost all trade union boycotts have been inaugurated to assist strikes, but they are of real assistance only in those industries where a considerable portion of the product is consumed by union men.

### *How Strikes are Ended*

Most strikes end within a comparatively short time, many lasting but a single day. Usually some sort of an adjustment is reached between the strikers and their employer, sometimes through reference of the disputed questions to a neutral board of arbitration. More frequently the adjustment is secured through direct negotiations between the union and the employer. Quite often the employer refuses to recognize any one in the negotiations other than his own employes. If the union, however, is sufficiently strong, it insists that the employer shall make a trade agreement with it, to govern the conditions of employment which are to prevail in the future. Observance of such trade agreements, since they are unenforceable at law, depends upon the strength of the organization on both sides.

If the employer wins a complete victory, he refuses to recognize the strikers as a body, but usually re-employs most of them. The union leaders are likely not to get back their old positions, and may be prevented from getting work elsewhere.

### *Effect of Strikes*

Of the strikes undertaken in the last thirty years, by trade unions, one-half have been won by laborers, and one-third by employers, the rest were compromised. A majority of the strikes not called by labor organizations, on the other hand, have been won by the employers.

Strikers have always been more successful in times of prosperity than in those of depression. While demand is keen, employers can ill afford to have their factories closed, and at such times there are few unemployed to take the places of strikers. Slack times, on the other hand, make it difficult for strikers to win, for factories may be closed without much injury to the employers, and other workmen may easily be had.

A satisfactory net balance of gains and losses sustained through strikes has never been struck. John Mitchell has computed that the average time lost through strikes does not amount to one day per year for all workmen. The net losses directly traceable to strikes are equal to three cents per year for each inhabitant of the county. That strikes make employers more ready to grant the demands of the laboring men seems certain. For every advance in wages secured through strikes more than a dozen are won without them, in many cases out of fear of strikes.

### *History of Strikes*

Not until the interests of the masters had become distinctly different from those of their workmen, could strikes play any real role in industry. In most industries this stage was not reached until the nineteenth century was well advanced. The first epidemic of strikes throughout the country occurred in 1827-29. Prior to 1881 about 1500 strikes are known to have taken place. Official annual statistics since 1881 show that the number of strikes has been increasing, but at a less rapid rate than has the population.

Statistics show, also, that the importance of wage demands as a cause of strikes has been slowly declining. Within the

last decade the question of the recognition of the union and of union rules has been responsible for as many strikes as have disputes over wages.

### *Strike Legislation*

During the first decades of the nineteenth century workmen who went out upon strikes were in some cases convicted of conspiracy to raise their wages, which was an offense in common law. When juries in the thirties refused to convict, this form of prosecution for striking ceased. Not until after the Civil War, however, were statutes enacted expressly legalizing strikes. Only a few states ever adopted such laws; and most of them applied only to strikes directly involving questions of wages or hours of labor.

During the sixties most industrial states enacted laws prohibiting intimidation in labor controversies. In the eighties some of them made it criminal for men to participate in combinations with the purpose primarily to injure employers or non-union workmen. At the same time few states declared boycotting to be a criminal offense. More recently Alabama and Colorado enacted laws making picketing illegal.

On the other hand, a number of states have enacted laws declaring peaceful picketing to be lawful. Maryland, California and Oklahoma have even gone so far as to provide that acts done by labor combinations shall not be deemed criminal unless they are unlawful when undertaken by individuals.

Statute law has had, however, but a slight importance in determining the legality of the activities of strikers. Such restrictions as it has placed upon their conduct have usually been nothing more than restatements of the common law. The few laws enacted to remove common law restrictions have been so construed by the courts as to render them almost meaningless.

### *Court Decisions*

Court decisions upon the legality of the activities of strikers have often been contradictory. As to combinations to strike, the view now accepted in perhaps the majority of jurisdictions is that their legality depends upon the objects they aim to accomplish, and upon the means they employ to gain these objects. It is an illegal object primarily to conduct strikes to in-

jure employers or non-union workmen. Illegal means are employed in furthering a strike when resort is had to "intimidation" or "coercion."

On passing upon the issue of fact, whether the aim of strikers has been primarily to advance their own interests, or to do injury to others, many courts have failed to discover the former when questions of wages or hours of labor were not directly involved. The bulk of authority is in favor of the view that strikes to gain a closed shop are unlawful. Similarly all forms of sympathetic strikes have been held illegal in most of the cases which have come up. Some decisions, on the other hand, hold that strikes are never illegal.

As to what constitutes "intimidation" and "coercion," also, much uncertainty exists. All cases agree that these terms cover all actions which place the average person in fear of physical violence. Other decisions go much beyond this, and assert that employers or non-union workmen are "intimidated" whenever they are compelled to do something they did not intend to do. The courts defining "intimidation" in this manner usually hold that no picketing during strikes is ever "peaceful." The more generally accepted view is that picketing is lawful if not conducted in an unreasonable manner, or by an unnecessarily large number of men.

The courts cannot directly prevent strikes for illegal purposes from being carried on. Under common law principles, and by the Thirteenth Amendment of the Constitution, persons may not be compelled to labor against their will, except in punishment for crime. They may leave work for any reason they see fit, even in violation of their contracts of employment, unless they are in military or sea service. In some cases courts have prohibited officers of labor unions from advising or calling illegal strikes, and from making benefit payments in aid of them. The more progressive view is that such prohibitions amount to an indirect method of compelling workingmen to labor against their will.

The most effective manner in which the courts interfere in strikes is through the allowance of injunctions enjoining the strikers from committing acts of violence or intimidation. Often these prohibitions are phrased very broadly, such as "coercing the said complainants to do any act they have a legal right to do or not to do," and "from in any manner interfer-



ing with the business of said complainants." Persons knowing of the issuance of such injunctions are bound to respect them, although they are not specifically named in them, or personally served with them. Violators of injunctions are subject to punishment for contempt of court without the jury trial.

The practical effect of the allowance of injunctions in strikes is often to discourage the rank and file of the striking workmen. The average wage-earner does not understand how he may conduct himself during a strike without violating the injunction which has been issued. The allowance of injunctions against strikers, again, usually loses them the support of public opinion since it seems to brand them as lawbreakers. The legality of boycotts is treated elsewhere.

## WAR ON THE PEOPLE<sup>1</sup>

Not employer or employee, but the patient, long-enduring public—foolishly patient and weakly enduring public—is the real sufferer in such riots as those which last week disgraced the city named in honor of brotherly love. Street cars burned, innocent bystanders shot, men and women clubbed, fusillades of missiles from windows with answering volleys of pistol-shots—all these things are the physical outcropping of industrial mediævalism. The street car corporations have rights, the striking employees have rights—under the present system of not dealing with labor disputes both parties have too many rights. But above these legal rights of stopping work and of refusing to treat with unions stands the higher right of the people of Philadelphia to peace, safety, and order. We do not care for the present purpose whether this labor war was provoked or unprovoked, whether the companies or the men are most to blame; ultimately the fault lies with the community at large, because it has provided no reasonable way of dealing with such a situation, despite the fact that it is perfectly obvious that under the existing law conditions of lawlessness and violence may arise at any moment.

It is true that Philadelphia is no worse in this matter than many other cities, although political vote-buying and

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<sup>1</sup> Outlook. 94:517-8. March 5, 1910.



partisan bargaining with unions and corporations have there induced a peculiarly corrupt condition. On the other hand, all cities which have failed to note that some countries have taken steps to make such strikes difficult or impossible are to blame for their civic backwardness. In another place in this number of *The Outlook* an interesting account is given by Mr. Paul Kennaday of New Zealand's radical law for compulsory arbitration, which, if it has not literally abolished strikes, has at least in large measure stopped senseless labor warfare. Repeatedly *The Outlook* has described Canada's Board of Conciliation, under which it is a punishable offense against the law to declare either a strike or lockout without prior investigation by the Board. A few weeks ago Mr. Walter G. Merritt in *The Outlook* pointed out that strikes on public utilities in their effect on the public were disastrous and dangerous, and suggested that the Inter-state Commerce Commission and the Public Service Commissions of the States receive power to do as part of an ordered system what was done as an informal expedient and to avert public disaster by Mr. Roosevelt's Anthracite Commission. How or by whom the work is to be done is an open question. The trouble is that we—that is, municipalities, legislatures, and Congress—sit supinely by and do nothing.

Every reasoning man knows what will follow in any large American city if suddenly street car motormen and conductors go on strike and the companies send out part of their cars manned by strike-breakers or even by old employees who refuse to join their fellows. Crowds gather, a rabble collects, made up of men and boys, some strikers—more, probably, of the rowdy and reckless hoodlums found in the worst districts. From hooting and rough horse-play the advance to stone-throwing and brutal beating is quick. Then come police clubbing and shooting, and quickly the city is in a state of semi-anarchy, and savagery is seen to be as surely the result of mob excitement as it was in the days of the French Terror. It is a public duty to put down rioting; but it would be wise to forestall it by making the exciting cause impossible. The law should forbid strikes of public utility employees in a body and without notice, because such strikes are an incentive to crime and an outrage against public safety and comfort. But if it does this, it must, as a

matter of plain justice, provide a fair and reasonable way in which the claims of the employees acting together may be heard and the right or wrong determined. Conciliation and compromise must supersede brickbats and pistol-shots—and this not only for the benefit of workingmen and business men, but in order that such civic chaos as that in Philadelphia may become impossible under the sway of industrial democracy.

## VIOLENCE IN LABOR CONFLICTS<sup>1</sup>

“Can strikes be conducted without violence? Can they succeed when not accompanied by lawlessness?” These are two questions recently asked of himself by John Mitchell, President of the United Mine Workers of America. To both of them he answers positively, “Yes! If I believed otherwise, I should abandon the trade-union movement forthwith.”

Unfortunately, stern and inexorable facts which I have gathered from every section of the Union prove that if strikes can be conducted without violence, without assaults, without lawlessness, without riots and murder, they are not, and, with rare and insignificant exception, they never have been.

So continuous is the violence attendant on strikes that the reports fail to create any widespread popular abhorrence and reprobation.

Labor conflicts are war. But only when war is waged by barbarians does it involve the women and children, the homes, the property, and lives of non-combatants. Industrial wars make no distinction as to sex, innocence, or helplessness. They divide all involved into unionists and so called “scabs”; the one denying to the other “life, liberty and the pursuit of happiness,” and the other not infrequently turning and taking his assailant’s life in defense of his own.

No one can read and ponder the record of the outrages, assaults, and deaths due to labor disturbances in the United States in the two years and a half to June 30th of this year, as I have done, without amazement and horror over the

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<sup>1</sup> By Slason Thompson. Outlook. 78:969-72. Dec. 17, 1904.

crimes and unlawful acts accompanying the almost incessant strikes that have marked that period.

Possibly Mr. Mitchell sincerely believes that "the great majority of strikes are inaugurated and fought without one single act of violence," as he says, but the facts presented in the following table of killed, injured, and arrested, as far as I have been able to gather them, argue that Mr. Mitchell is singularly blind to what has been going on about him in the great struggle in which he has played such a conspicuous part:

*Killed, Injured and Arrested in Strikes in the United States  
Between January 1, 1902 and June 30, 1904.*

<i>State</i>	<i>Killed</i>	<i>Injured</i>	<i>Arrested</i>
Arizona .....	5	18	12
California .....	6	34	31
Colorado <sup>1</sup> .....	42	112	1345
Connecticut .....	4	45	65
Idaho .....		12	
Illinois .....	35	477	1353
Indiana .....		14	39
Iowa .....	3	5	22
Kentucky .....	3		5
Louisiana .....	1	38	79
Maryland .....		9	10
Massachusetts .....		3	19
Michigan .....	3	4	7
Minnesota .....		9	1
Mississippi .....			1
Missouri .....	8	40	69
Nebraska .....	2	5	9
Nevada .....	3	4	1
New Jersey .....	3	76	125
New York .....	4	123	1010
Ohio .....	3	20	23
Oregon .....		4	18
Pennsylvania .....	35	486	678
Tennessee .....	4	7	88
Texas .....	1	15	62
Utah .....		41	223
Virginia .....	1	24	25
Washington .....		6	11
West Virginia .....	13	19	192
Wisconsin .....	1	1	10
	180	1651	5533

Since June 30th last, to which date this table brings down the record, we in Chicago have had at the stock-yards which has been proclaimed all over the country as a "peaceable strike," involving 26,000 workers. There have been five deaths, 213 serious assaults, innumerable riots and arrests,

<sup>1</sup> In addition to the arrests in Colorado, there were 573 persons deported, the first case of deportation being that of 32 Japanese driven out by the striking miners of Fremont County on February, 1902.

and untold suffering and misery due to this one strike alone, and Chicago has had other strikes during the same period, with their attendant murders, assaults and arrests swelling the record of violence.

In the two days fighting at San Juan and El Caney, the American losses were 230 killed, 1,283 wounded, and 81 missing. If the full facts could be known, the fatally wounded in the two and a half years' labor war represented in the above summary would exceed the death list at San Juan, even as its incomplete list of injured does that in the battle which settled the Spanish-American War.

The killed reported in this labor war were divided as follows:

<i>Killed</i>	
Non-union men .....	116
Union strikers .....	91
Officers .....	13
Total .....	180

The union men were almost invariably killed by non-unionists in self-defense, or in riots between them and officers of the law.

The non-union men almost invariably came to their death through slugging, shooting, dynamite, ambushades, and all manner of assaults in which unionists or union sympathizers were the aggressors.

The officers died in the performance of their duty in endeavoring to preserve the peace in conflict with strikers.

The wounded reported in this labor war were divided as follows:

<i>Injured</i>	
Non-union men .....	1,366
Union strikers .....	151
Officers .....	134
Total .....	1,651

The explanation as to how the three classes came to be killed applies to the injured. But it should be remembered that the list of injured is far less complete than that of the killed, because all news agencies are more particular in reporting strike fatalities, and I have ignored numberless assaults, beatings and stonings, where the serious nature of the injury was not reported.

The arrests reported in this lawless war were divided as follows:

<i>Arrests</i>	
Non-union men .....	374
Union strikers .....	<u>5,159</u>
Total .....	5,533

This brief table conveys its own analysis, although it should be added that had the arrests in connection with labor conflicts been publicly reported in other cities with anything like the fullness they are in Chicago newspapers, the exposure of the appalling prevalence of violence attending strikes would have been even more startling. This leads to the explanation that in gathering the above facts, I had to rely on published accounts. Experienced and trustworthy newspaper men were employed in sixteen widely separated news centers of the country to examine the files of the leading newspapers of their respective sections. Where they returned "several" wounded or arrests, it has been entered for only two; and where the reports read "many" the entry has been made three.

The inquiry was instituted to secure the concrete facts, if possible, and some reliable data as to the mortality through the unceasing war which labor unions have been waging in the United States during recent years. The National Bureau of Labor has told us that strikes and lockouts from 1881 to 1900, inclusive, have cost employees \$306,683,223, and employers \$142,659,104. The Labor Associations report how many of their strikes are successful, are compromised, or fail; the numbers engaged, losses, and gains. It is estimated that the labor troubles of 1902-03 reduced the purchasing ability of the American people \$1,000,000,000. Records are kept of the number of murders, suicides, and lynchings annually. But hitherto no well-organized attempt has been made to gather into comprehensive shape the appalling record of violence and lawlessness partially disclosed in the foregoing tables.

During the period covered by my inquiry, there were no serious labor disturbances in many of the States. The condition in various agricultural states was well summarized in the report of my Minnesota correspondent, as follows:

In this section strikes are the exception rather than the rule. What few labor disagreements arise are settled by arbitration. This is an agricultural country, and the only strikes of any importance generally re-

suit from railroad or street-car, flour-mill, or iron mine troubles. There have been no railroad or street-car strikes during this period, and the two or three little disputes in the mines brought no violence. The mill strikes last fall were reasonably orderly, only four persons being maltreated.

I could not find a single strike productive of violence in the Dakotas. Of course these states are even less industrial and more agricultural than Minnesota.

My correspondent from Oregon and Washington wrote:

The results of my exhaustive inquiries appear meagre because the above period was one of prosperity for our Northwest, work was easily found, and there were no racial complications. Manufacturing is comparatively new and unimportant here, class distinctions are practically unknown, and the workers, as a rule, know their employers personally. Under such circumstances labor troubles are bound to be rather smaller and less bitter than those of the East.

On the other hand, the difficulty of obtaining anything like full statistics of the violence attending strikes is indicated in the following extract from the report of my San Francisco correspondent, who attempted to cover California and Nevada:

I regret to say that my report by no means is as complete as I hoped to make it at the outset, as I found that nothing was published with reference to a large number of assaults due directly to the many strikes which have occurred here and elsewhere in this State during the period referred to. Especially is this true of the country districts and the mining troubles; the reason being, apparently, that the correspondents feared to dwell upon these occurrences lest they should hurt the reputation of their town, or for personal reasons. I was also astonished to find that in many instances, even in San Francisco, the papers failed to follow up the troubles between employers and employed, and, unless reported to the police, no mention is made of the assaults.

That the cold figures in the above tables do not begin to tell the whole harrowing tale of violence and outrage attending strikes during the period mentioned may be judged from the fact that in the State of Pennsylvania alone, between May 1st and November 3rd, 1902, in connection with the "Peaceable strike" with which Mr. John Mitchell was more or less identified, there were:

- Thirty occupied dwellings dynamited.
- Forty trains obstructed or wrecked.
- Four dams and bridges dynamited.
- Scores of houses burned, stoned, shot into, or otherwise attacked.
- Unnumbered riots and assaults with clubs, stones, and other weapons.
- Cattle poisoned, doctors forbidden to attend the sick, ministers boycotted for ministering to the dying.

The story of the reign of terror in the Pennsylvania anthracite coal region during the last great strike has never been and can never be written. From beginning to end it was attended by every conceivable description and degree of human fiendishness. Malicious and criminal mischief held



carnival in many districts. Outbreaks of minor deviltry did not spare the mother bearing her infant in her arms, or innocent children on their way to school. Clergymen were notified not to bury dead non-unionists, and union men refused to worship at the same altar with the industrious "scab" who preferred to work rather than see his family starve.

"Violence" seems a very moderate word by which to describe deeds like these, which might more adequately be termed savagery.

Nor must it be inferred that the industrial war as waged in Pennsylvania or Colorado has any monopoly of the barbarity that breaks the peace of the commonwealth, defies the law, and sets man against man through every member of his family. In every section of the country like conditions and passions have produced like results. We have seen funerals stoned in Chicago, and graves and crematories desecrated in San Francisco by striking unionists.

It may be that violence is not necessary to the success of any strike, but the testimony of incontrovertible facts proves that violence and lawlessness in some form or other is the almost inseparable concomitant of all strikes involving large bodies of men. We hear some leaders pleading publicly for peace, but they and their followers know that a strike means a breaking off of peaceable relations and an appeal to force, which at every stage employs the terms, tactics and weapons of war in contempt of the law and in defiance of the sovereign authority of the State.

A strike involving large bodies of rugged men, where the employer exercises his legal right to fill the places of the strikers, unattended by verbal and physical violence, including assaults, boycotts, ostracism, vile epithets, hanging in effigy, threats, intimidation, stoning, slugging, shooting, destruction of property, dynamiting, arson, assassination, murder, or some of these symptoms of peace-defying passions, is a rare species of strike, almost as unknown as it is innocuous.

To ask men to unite in self-sacrifice for principle, involving, as most strikes necessarily must, deprivation and distress to themselves and those dependant on them, and expect them to see their places filled without the resentment



that would kill the thing it hates, is to imagine men emancipated from the passion that sent Cain forth a fugitive on the face of the earth. A strike without violence of some sort is a barren idealism that exists only in the minds of self-deceived sentimentalists, professional agitators, and unsophisticated economists.

Since the above was written, I have gathered the following additional statistics from the reports in the Chicago newspapers covering the three months to September 30th, 1904, which show that there has been no abatement in the violence attending labor strikes:

*Killed, Injured, and Arrested in Strikes in the United States During Three Months, July 1 to September 30, 1904.*

	<i>Killed</i>	<i>Injured</i>	<i>Arrested</i>
Non-union men .....	9	260	41
Union strikers .....	5	22	540
Officers .....	4	33	.. .
Total .....	18	315	581

Making a total for the two years and nine months of:

	<i>Killed</i>	<i>Injured</i>	<i>Arrested</i>
Non-union men .....	125	1,626	415
Union strikers .....	56	173	5,699
Officers .....	17	167	.. .
Total .....	198	1,966	6,114

If the returns for the last three months included in this table were anything like as comprehensive as those for the preceding two years and a half, the showing would be a still more startling contradiction of the theory that strikes can be conducted without violence or that they are so conducted.

## DYNAMITE OUTRAGE<sup>1</sup>

One of the most sensational events in the history of industrial labor in the United States began at Indianapolis, Ind., on April 22nd, 1911, when John J. McNamara, secretary-treasurer of the International Association of Bridge and Structural Iron Workers, was arrested on a charge of murder in connection with the explosion that wrecked the building of The Times newspaper at Los Angeles, Cal., on Oc-

<sup>1</sup> Harper's Encyclopaedia of United States History, Vol. 3.

tober 1st, 1910, when twenty-one persons were killed, and a property loss of \$1,000,000 was sustained. This arrest was soon followed by that of his brother, James B. McNamara and Ortie E. McManigal; by the extradition of all three to Los Angeles; and by their indictment on May 4th following by the Grand Jury of that city. These proceedings were followed by the arrest in Indianapolis of William J. Burns, the detective who had worked up the case, and several legal representatives of Los Angeles, on a charge of having kidnapped the McNamaras and McManigal; their release on bail; the discovery of considerable quantities of dynamite stocks hidden in various places; the confession of McManigal, implicating the McNamaras and disclosing methods of dynamite outrages, and the pledge of ample funds for the defence of the accused. The McNamaras and many conspicuous labor leaders declared the proceedings—so far as here outlined—the result of a conspiracy by capital against organized labor.

The general public had been aware for several years of numerous mysterious wreckings of buildings, bridges, viaducts, and other large public, private, and corporate structures by dynamite but as none of the perpetrators of such outrages had been apprehended, the incidents were usually attributed to "some labor trouble," and then passed out of mind. The disclosures in the Los Angeles case, however, threw a new light on the subject, and this was intensified by the publication of a list of seventy dynamite outrages that had occurred between the summer of 1905 and mid-March, 1911, compiled by the National Erectors' Association. Commenting on this list the New York Times said:

"Practically no part of the United States has been free from dynamite outrages during the last few years. In nearly all cases there was a careful preparation, showing that the outrages were planned and executed by men who knew their business.

"Many of the outrages entailed a loss of life, and all caused considerable financial losses. Contractors, in some cases, have been driven into bankruptcy because of the lack of confidence in their ability to construct without disaster, and some contractors have been compelled to put their work in other hands.

"Planning of a professional nature has been a striking feature of all the outrages. In numerous instances clocks operating the explosives were set to cause the explosion in different parts of the country at exactly the same minute. Homes have been endangered, although in most cases the bombs failed either to explode or were found in time to prevent disaster."

After spending ten weeks in the county jail at Los Angeles, John J. and James B. McNamara pleaded "not guilty"

to nineteen charges of murder on July 12th, Judge Walter Bordwell having overruled every point advanced by the defence for the quashing of the indictments. The task of selecting a jury proved a formidable one, owing to objections interposed by counsel on both sides. By the middle of November 325 men had been drawn and only five accepted, and it was then believed that the jury-box would not be filled before the end of the year.

In the meanwhile (October 28) Charles W. Miller, United States attorney at Indianapolis, Ind., filed a petition in the County Criminal Court, charging that a conspiracy had existed to unlawfully transport dynamite and nitroglycerine on passenger trains engaged in interstate commerce from that city through Indiana, Illinois, Pennsylvania, Missouri and California to Los Angeles, and asking possession of the incriminating evidence seized by the police at the offices in that city of the International Association of Bridge and Structural Iron Workers, of which John J. McNamara was was secretary, and at other places in Indianapolis, to be used in a federal grand jury investigation.

By December 1st, however, Detective Burns had woven such a close net-work of evidence around the accused that on that day James B. McNamara pleaded guilty to murder in the first degree, in open court, in having placed the dynamite under the Times Building in Los Angeles, and his brother, John J. McNamara, pleaded guilty to having caused a similar explosion at the Llewellyn Iron Works, also in Los Angeles, from which no fatalities occurred. On December 5th, Judge Bordwell sentenced James B. McNamara to imprisonment for life and his brother to fifteen years. In making his written confession James B. McNamara declared that on the night of September 30th, he had placed a suitcase containing sixteen sticks of 80 per cent. dynamite, set to explode at one o'clock the next morning, in Ink Alley, a portion of the Times Building; that it was his intention to injure the building and scare the owners; and that he did not intend to take the life of any one.

After the sensational termination of the McNamara trial in Los Angeles the federal grand jury there, as well as that at Indianapolis, Ind., began a rigid inquiry to discover the person or persons "higher up" who had planned, sanctioned

and supplied the funds for the dynamiting operations in various parts of the country. In this inquiry they were at first greatly aided by Ortie E. McManigal, who had confessed to having personally caused many explosions by direction of James B. McNamara, and later by several former employes of McNamara at his headquarters in Indianapolis, and the seizure of a large quantity of records and other evidence, besides many stocks of dynamite that had been secreted in out-of-the-way places.

The following are brief statements from the list compiled by the National Erectors' Association:

### *Dynamite Outrages, 1905-1911*

One of the earliest of the attacks was in the summer of 1905, when a watchman on a bridge under construction for the Central Vermont Railroad at Miller's Falls, Mass., was assaulted. The following morning the foreman found thirteen sticks of dynamite on the bridge. The fuse had been lighted, but had become extinguished.

During the same summer an engineer found dynamite in the fire-box of a hoisting engine used in the construction of the Kimberley Avenue bridge, over the West River, for the city of New Haven, Conn.

An attempt was made on March 12, 1906, to dynamite the Hotel Frankfort, Cleveland, Ohio, where a number of employees of a bridge construction company were boarding. The dynamite exploded, but the wrecked part of the building was reached in time to prevent destruction by fire.

Three sticks of dynamite were discovered in the firebox of a hoisting engine used in the construction of the Arcade Building in Cleveland on April 2, 1906. The fuse had been attached and, it appeared, had been lighted.

An attempt was made one month later to wreck a derrick used in constructing a bridge on the Buffalo & Susquehanna Railroad. The attempt was frustrated.

A derrick used in the construction of the Central Railroad of New Jersey was dynamited and destroyed on May 31, 1906.

Dynamite was found on a derrick used in the construction of a Nickel Plate viaduct on September 25, 1905. A time clock was found also. The infernal machine probably had been dropped from a passing train, **the package had been broken open and the dynamite scattered.**

During the construction of a viaduct for the P. V. & C. Railroad, near Clairton, Penn., a derrick car was dynamited. The outrage was committed on Oct. 12, 1906. A watchman was decoyed away from the place and assaulted.

Dynamite exploded under a bascule bridge over the Cuyahoga River at Whiskey Island, near Cleveland, Ohio, on Dec. 30, 1906. The damage was slight.

In September, 1907, a hoisting engine, used at the plant of the American Steel and Wire Company, Cleveland, was dynamited and destroyed. The dynamiting was done at night.

Early in the morning of Oct. 30, 1907, an attempt was made to wreck the Baltimore & Ohio bridge at Youngstown, Ohio. The dynamite exploded, but the bridge was not wrecked.

Two months later dynamite was placed under a railroad bridge on the Newark Branch of the Erie Railroad, near Harrison, N. J. The dynamite damaged one of the girders and blew out thirty-six square feet of buckle plate. The damage was \$2,000.

Two tons of material which was to have been used on the Parma Road Bridge on the Cleveland Short Line was damaged to such an extent on Dec. 31, 1907, that it had to be replaced. There was a loss of \$500.

On the same night ten tons of material for the construction of the

L. E. & P. Railroad's Mill Creek viaduct was damaged and a loss of \$1,200 resulted.

Several girders for the Eagle Avenue Bridge, Cleveland, were dynamited the night of Jan. 17, 1908, and considerable surrounding property was damaged.

Thirty sticks of dynamite were found in various parts of a derrick-car used in the construction of a Chicago & Northwestern Railroad bridge over the Mississippi River at Clinton, Iowa, on February 16, 1908. Only a small part of the dynamite exploded. The damage was \$2,000.

A month later a derrick-car on the Chicago, Milwaukee & St. Paul Railroad at Buena Park, Chicago, was dynamited.

During the same month a charge of dynamite was placed on a draw-bridge at Perth Amboy, N. J., causing a \$1,500 loss.

A bridge near Bradshaw, Md., was damaged the same night.

A hoisting crane used in the construction of the Chelsea Piers, New York, was damaged to the extent of \$1,000 the night of April 5, 1908.

A loss of \$1,000 was caused on April 13, 1908, when dynamite was placed under material prepared for the Philadelphia Elevated Railroad.

An explosion of dynamite caused a loss of \$2,000, April 26, 1908, at a bridge at Fall River, Mass.

Dynamite caused a loss on May 3, 1908, to the Cincinnati Hamilton and Dayton Railroad's Miami River bridge at Dayton, Ohio. Much of the material had to be replaced.

An attempt was made the night of May 21, 1908, to destroy a draw-bridge over the Bronx River of the New York, New Haven & Hartford Railroad. A watchman was assaulted and his cries caused the would-be perpetrators to flee. The men discarded a suitcase in their flight, containing 103 sticks of dynamite and two coils of fuse.

A bridge of the same company at Baychester, N. Y., was damaged to the extent of \$1,500 early the next morning.

An apparent attempt was made the night of May 24, 1908, to destroy ■ Baltimore & Ohio bridge at Aiken, Md. A watchman pursued a man who was loitering about the bridge, and the fugitive tripped over a guy wire. The next morning five sticks of dynamite were found where he fell.

An attempt was made June 2, 1908, to dynamite a Baltimore & Ohio bridge at Perryville, Md. Four men approached the bridge, but were frightened away by a watchman, leaving dynamite behind them.

The same night an explosion of dynamite wrecked a steel derrick, twisted the rear wall of a big steel building out of shape, and did other damage at Cleveland, Ohio. Fourteen sticks of dynamite, unexploded, were found later with burned fuses attached.

The evening of June 15, 1908, a charge of dynamite exploded under a pile of material used in the construction of a bridge for the New York, New Haven & Hartford Railroad at Somerset, Mass., entailing a loss of about \$1,000.

Two charges of dynamite were exploded on the bridge of the Lehigh Valley Railroad at Buffalo, N. Y., the night of July 1, 1908, weakening the structure and causing a loss of \$1,500.

The Illinois Central Railroad bridge in Chicago was dynamited on August 6, 1908. The loss was nearly \$20,000.

The same night the Harrison Avenue viaduct at Louisville, Ky., was damaged by either dynamite or nitroglycerine.

Two charges of dynamite were exploded on the Eighteenth Street bridge in St. Louis, Mo., on the morning of August 9, 1908.

An attempt was made on October 15, 1908, to destroy a bridge at Holyoke, Mass. Two watchmen found the burning fuse and put it out before any damage was done.

A charge of dynamite wrecked a portion of a bridge at Cleveland, Ohio, on November 30, 1908. The damage was \$500.

Dynamite wrecked a building in Kansas City, Mo., on December 24, 1908.

A loss of \$500 was caused at Indiana Harbor, Ind., on March 18, 1909, when a carload of steel was dynamited.

During the same month, at the same place, two packages of dynamite with a fuse attached were thrown from a Lake Shore freight train. No damage was done.

The southeast side of the new opera house at Boston, Mass., was destroyed by dynamite March 27, 1909.



A part of a viaduct at Hoboken, N. J., and considerable surrounding property, was damaged by dynamite on March 30, 1909. Several persons had narrow escapes, five or six being injured.

A derrick-car doing construction work at Kansas City, Mo., was dynamited on April 29, 1909.

The Cincinnati Southern bridge at Cincinnati was damaged by dynamite the next month.

Another attempt was made to wreck the same bridge on May 24, 1909, two charges of dynamite being exploded.

Considerable damage was done on June 7, 1909, to the New York Central Railroad's bridge across East Ferry Street, Buffalo, N. Y.

A loss of \$2,000 was caused by the dynamiting of material awaiting delivery June 26, 1909, for the Pennsylvania Railroad bridge at Steubenville, Ohio.

The same night the Main Street viaduct at Kansas City, Mo., under construction, was dynamited.

A suit-case containing gun-cotton was exploded under a pile of steel girders in the yard of the Whitehead & Kales plant at Detroit, Mich., on June 9, 1909.

A third attempt to wreck the Cincinnati Southern's viaduct was made August 12, 1909. The dynamite caused \$700 damage.

Dynamite partly wrecked a railroad bridge in New York City, August 15, 1909.

A month later dynamite destroyed a derrick used in the construction of a viaduct over the New York Central Railroad tracks at Buffalo, N. Y.

Another attempt on this same viaduct was made on October 6, 1909.

Four buildings under construction by Albert von Spreckelsen in Indianapolis were damaged on October 24, 1909. The total estimated loss was \$13,000. The buildings were a telephone exchange, a library building, Mr. von Spreckelsen's planing-mill, and his barn.

A crane being used in the construction of a bridge near Cleveland, Ohio, was dynamited on Nov. 4, 1909, causing a loss of \$40,000. A watchman was buried under the debris and narrowly escaped death.

A bomb was exploded under four cars of structural steel on a Michigan Southern side track in Chicago on January 22, 1910. It is estimated that the damage was \$3,000.

The plant of the Pacific Coast and Lumber Company, Oakland, Cal., was wrecked by dynamite during the summer of 1910, being the fourth time in two years.

An office building being erected in Seattle, Wash., was destroyed by dynamite in September, 1910.

Dynamite was used in two places in Peoria, Ill., on the night of September 4, 1910. The plant of the Lucas Bridge and Iron Works was wrecked and the night watchman was injured seriously. Two car-loads of steel girders for use in a railroad bridge at Peoria were dynamited. A two-gallon can of nitroglycerine was found hidden in the steel girders of the new railroad bridge the next day. A time clock had been set, but the explosion was prevented by faulty electrical connections. The clock had been set to discharge the nitroglycerine at the same hour the Lucas plant was destroyed. A bomb exploded at the plant of the Winslow Brothers' Company at Chicago, on September 15, 1910.

The Los Angeles Times Building was destroyed on October 1, 1910, twenty-one lives being lost. The property loss was \$1,000,000. This was the worst disaster due to an explosive that had been recorded.

A search the next day disclosed dynamite near the home of Gen. Harrison Gray Otis, owner of the "Times," and the home of the secretary of the Merchants' Association.

In the summer of 1910, dynamite was exploded in a new church structure at Clinton, Ind., and the building wrecked. Shortly before a bridge at the place was wrecked by dynamite.

On March 20, 1911, dynamite was exploded beneath a new wing of a hotel under construction at French Lick, Ind.

Early in the morning of March 24, 1911, dynamite exploded in the basement of the new court-house at Omaha, Neb., causing a large loss.

The same night the office of the Caldwell & Drake Manufacturing Company at Columbus, Ind., were dynamited and destroyed. The plant was not damaged. The Omaha court-house was built by the Columbus concern.

Ore conveyors of Pickands & Mather of North Randall, Ohio, were totally destroyed by dynamite on March 25, 1911.

St. Peter's Street (South Bend, Ind.) viaduct was dynamited on April 2, 1911. The same day an attempt to wreck Grand Trunk Bridge across St. Joseph River was thwarted.

The Springfield (Mass.) municipal building, in course of construction, was damaged by two dynamite explosions on April 4, 1911.

The Westchester & Boston Railway viaduct at Mount Vernon, N. Y., was wrecked by dynamite on September 3, 1911.

The new Lyon County court-house in Yerington, Nev., built of reinforced concrete, was damaged beyond repair by a dynamite explosion, December 18, 1911.

## THE BOYCOTT<sup>1</sup>

A boycott in labor disputes may be defined as a combination of workmen to cease all dealings with another, an employer or, at times, a fellow worker, and, usually, also to induce or to coerce third parties to cease such dealings, the purpose being to persuade or to force such other to comply with some demand or to punish him for non-compliance in the past.

The boycott may be divided into the primary, the secondary, and the compound boycotts. A primary boycott, an unimportant form, may be defined as a simple combination of persons to suspend dealings with a party obnoxious to them, involving no attempt to persuade or to coerce third persons to suspend dealings also.

A secondary boycott consists of a combination of workmen to induce or persuade third parties to suspend business relations with those against whom they have a grievance. A compound boycott appears when the workmen use coercive and intimidating measures in preventing third parties from dealing with the boycotted firms.

Compound boycotts are of two kinds: those involving threats or pecuniary injury and those involving threats of actual physical force and violence.

The primary, secondary and compound forms of the boycott may be directed against a fellow workman or against an employer of labor. If directed against a workman, it is sometimes called a labor boycott. In enforcing a boycott, effort is sometimes made to induce or coerce customers to withdraw patronage from the "unfair" employer; sometimes to induce or coerce sellers to cease supplying an "unfair"

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<sup>1</sup> American Labor Year Book, 1916. p. 84-5. By Harry W. Laidler.



employer with needed material; sometimes to induce or coerce employes to quit work. The last named form is known in law as a labor **boycott**.

Five states prohibit boycotting by name. Thirty-three states make illegal one or more forms under statutes relating to conspiracy, coercion, intimidation, interference with employment, and enticing employes.

The common law decisions in the states have generally held the primary boycotts legal. As nearly as can be ascertained, the highest courts have flatly decided against secondary or compounding boycotting in some fourteen states. In two states labor boycotts only have been condemned.

The cases among others in which boycotting has been declared legal are: *Lindsay Co. vs. Montana Federation of Labor* (Montana 1908) 96 Pac. 127; *Parkinson and Co. vs. Buildings Trades Council* (California 1908) 98 Pac. 1027; *Pierce vs. Stablemen's Union* (California 1909) 103 Pac. 324; *National Protective Association vs. Cummings* (New York 1902) 63 N. E. 369; and *Mills vs. U. S. Printing Co.* (New York 1904) 99 App. Div. 605.

## INTIMIDATION AND DEPORTATION<sup>1</sup>

In the early spring of 1917 a number of small strikes occurred among the loggers of Idaho and eastern Washington. These strikes were repeated until about the first of June. Two thirds of the lumber workers of Idaho, Montana, and eastern Washington were out and the strike had spread to the eastern slope of the Cascades in Washington. It was at this time that a series of persecutions started which continued throughout the war. Two Camps of the third Oregon Infantry were sent to Cle Elum and they rounded up all the pickets, threw them into the stockade at Ellensburg, Wash., where they were held for months without charges being placed against them.

Soldiers were sent to many points in Washington and Idaho where the same thing occurred. In the meantime the strike had spread into the rich timber belt of Puget Sound and by July 15, 1917 fifty thousand lumber workers were on strike,

<sup>1</sup> Extract from an article by Peter Stone. Acting Secretary-Treasurer of the I. W. W. in *The American Labor Year Book*, 1919-1920, p. 191-2.

their demands being a basic eight hour day and sanitary camp conditions.

On June 12, 1917 fourteen thousand miners in the city of Butte, Mont., went on strike following the loss of two hundred sixty lives in a fire in the Speculator mine. The strike was principally for the abolition of the blacklist and for union control of safety appliances underground. This strike was called and conducted jointly by the I. W. W. and the Independent Miners' Union of that city. The strike was, however, taken up by the I. W. W. miners in Arizona, where twenty-four thousand miners went out.

On July 10 nearly a hundred miners in Jerome, Ariz., were taken from their homes early in the morning by the so-called Loyalty League. They were loaded on cattle cars. The train was headed towards California, but was turned back at the state line by the officials of that state. The men were then taken to Prescott, Ariz., where they were held in jail for three weeks before they were released.

At Bisbee, Ariz., at five o'clock in the morning of July 12, two thousand company officials, gunmen, business men etc., armed with rifles, similarly dragged twelve hundred strikers and their sympathizers from their beds and compelled them to march miles to Lowell and neighboring towns. They were finally coralled into a ball park at Lowell, until a train of cattle cars was made up. The miners were forced into the cars amid rioting, in which one man, a striker, was killed. The train was sent through the desert and finally taken charge of by the United States soldiers encamped at Columbus, N. M.

Here they stayed for three months, being furnished army rations, waiting for the government to give them protection in returning to Bisbee. This the government steadfastly refused to do, and finally, when the army rations were cut off, the camp broken up. Some of the men drifted back to Bisbee where they were promptly arrested. Others scattered to different parts of the country.

## STRIKE-BREAKING<sup>1</sup>

The most recent institution for meeting the exigencies of modern industrial life is an establishment concerned in strike-

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<sup>1</sup> New Encyclopaedia of Social Reform. p. 1167.

breaking. This is an agency which provides men to factories, street-car lines, etc., the employees of which have gone on strike. The strike-breakers are not a hoodlum class, neither are they men looking for excitement or occasional work; but a set of picked men, each skilled in a particular line of work. The agency has about 225,000 men on its lists in different trades throughout the United States. The handling of such an army of workmen and their proper placing at times of need requires system.

Candidates, in order to get their names on the list, must pass a rigorous examination as to character and physical and professional fitness. A corps of twenty-three men is detailed to examine candidates. When a strike is impending or has been declared, this agency is notified by the employers, and it contracts to supply a sufficient number of skilled men to take the place of the strikers, and then selects its men, each of whom must sign an agreement to keep at work on the new job at least thirty days. Traveling expenses in addition to good wages are paid by the agency. The agency maintains a commissary and a quartermaster's department to feed and house the strike-breakers, and is able to fill the strikers' places within a very short time.

Strike-breakers are, however, frequently exposed to violence on the part of the strikers and their friends. A department of protection has been formed by the agency to provide adequate protection for its men. The head of this department is in touch with sheriffs and police officials all over the country. His men, numbering between 500 and 600, are sworn in as special deputies on each occasion so as to have a legal standing; they are under military discipline and must pass an examination equivalent to that for the police department of New York.

While the department of protection is well organized and reckless or irresponsible men are kept out, it is nevertheless a reflection on the city, state or county to have need of this private army of detectives or deputies for the protection of private or corporate property. The agency has succeeded well in breaking strikes, and has attained large financial success. But it is open to the same objection as the Pinkertons (q.v.) and other private semimilitary organizations within the state having the privileges but not the responsibilities of public officials.

THE PINKERTON AGENCY AND LABOR STRUGGLES <sup>1</sup>

In 1852 Allan G. Pinkerton, a Scotchman, involved in the Chartist outbreak in Birmingham, emigrated to the United States, and here, having from love of adventure secured the arrest of a band of counterfeiterers, established in Chicago a detective agency. His agency was successful, and during the War of the Rebellion, Mr. Pinkerton superintended the secret service of the army. When the industrial conditions of the country led to violence and strikes, Pinkerton organized a body of armed men who were hired to protect the property of the employers. Later, in the labor troubles in Pennsylvania, Pinkerton's Agency was employed against the Molly Maguires, a secret society founded in the coal-mining section of Pennsylvania, which was exposed chiefly through the instrumentality of James McParlan, a detective, and Franklin B. Gowan, President of the Pennsylvania & Reading Coal & Iron Company. Henceforth the Pinkerton Agency was employed more and more by employers to defend their works from threatened violence on the part of mobs in connection with strikes. They became bitterly hated by working men. The working men claim that the Pinkertons do more than protect the property of their employers. They claim that the agency goes into the slums of the great cities, hires desperadoes and men of the worst character, swears them in as special detectives, and then sends them not only to protect the property of employers, but to incense the populace and provoke it to violence, then firing upon the populace on the least provocation. The working men claim that the Pinkertons create more evil than they allay. Stories are circulated of the Pinkertons secretly doing violence themselves, laying it to working men, and then firing on them. In the great Homestead strike Pinkertons in large numbers and armed with rifles were brought to Homestead, the working men rising and repulsing them as they would an invading army. Working men claim that the duty of protecting property should be left to the police; that if these are not sufficient, the army should be called in, but that bodies of reckless armed private mercenaries should not be allowed to fire on citizens. As a

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<sup>1</sup> New Encyclopedia of Social Reform. p. 896-7.

result of this popular feeling, Congress appointed a committee to investigate into the employment of such private armed bodies of men, and some states passed bills forbidding such employment.

Nevertheless, the Pinkerton and other agencies are continually employed in times of strikes, and the former is said to have been particularly active in the Colorado labor struggles. During the Haywood trial (June 1907) attempts were made by labor agitators to charge the Pinkerton agents with fomenting strife among and violence on the part of the Western Federation of Miners. A number of letters from operatives in the pay of the Pinkerton agency were placed in evidence in court, which, however, proved nothing more than spying on the part of these men. The letters were obtained and placed before the court on behalf of the defense by Morris Friedman, a young Hebrew-American, who testified that he had been stenographer to McParland, the manager of the Denver agency, and admitted that he had taken many letters from that office, without asking anybody's permission, for use at the "proper time and place, as I have done." These letters, together with other evidence, were, however, stricken out and withdrawn from the jury in the Haywood trial (1907) as soon as the defense rested without making the necessary connection to make them material. Friedman admitted having written a book based on his observations in the Pinkerton office under the title "The Pinkerton Labor Spy." The publishers of this work in their preface state that they "recognize the Pinkerton agency as an indispensable instrument to the capitalist class in the great and unceasing struggle with labor." (For a complete statement of this phase, and a statement of contrary views, see article *Western Federation of Miners* in *New Encyclopedia of Social Reform*.)

The assertion that Pinkerton agents have been engaged in espionage in the interests of capitalists has not been denied, and the practice concerns this work, therefore, only in its relations to society. The Pinkertons were responsible for the disbanding of the "Molly Maguires"; for the capture of a gang of thieves who had robbed the Adams Express Company safe of \$700,000 on a New York, New Haven & Hartford Railroad train (Jan. 6, 1866), and in dispersing a body of murderers who had terrorized the State of Indiana for a number of years.



Why do private corporations employ private detective agencies instead of calling upon the police of the municipalities and the constabulary of the states? Is it from choice or from necessity? Why do, moreover, the government of the United States, the governors of the states, and the mayors of the cities in this country permit such agencies to exist? Other civilized countries do not permit private police agencies to interfere with the state agencies of public safety. Why, then, has such a condition arisen in this country?

There can be only one answer to these questions. The inadequacy and the inefficiency of our police force—taking this work in its widest sense, as implying all agencies that have to do with the prevention and detection of crime, the maintenance of public safety, and the protection of life and property. This inefficiency may be due to one or all of three causes: (1) Paucity of numbers in the force; (2) intellectual deficiency of the men employed; (3) lack of integrity.

## THE RIGHT TO STRIKE<sup>1</sup>

What is the right of strike? If it means the right of men to quit private employment individually or collectively every one will concede it. No man can be made to work against his will in free America, except he becomes a vagrant or a convict. But the right to quit work essentially involves the corresponding right to continue at work, and one is just as sacred as the other. Government should not deny or diminish either. It should, if need be, sustain men in the exercise of both. Upon this proposition I think we agree.

But beyond this point the divergence begins. The mere right to quit working does not define the organized wage earner's conception of a strike. That is purely negative and accomplishes nothing. What he understands and what he has been taught to understand by his leaders, by political parties, and candidates anxious for his vote, is that the strike is a weapon which he has the right to wield offensively or defensively in order to effectuate the purpose for which he invokes it. He may, in pursuance of it, disregard contracts, compel others to strike, prevent others from taking his place and con-

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<sup>1</sup> Extract from a letter of Senator Charles S. Thomas to Samuel Gompers, Congressional Record, December 2, 1919.

tinuing operation; he may destroy property and terrorize communities if by doing these things or any of them he may accomplish his object, even though it may rise to the dignity of a conspiracy against trade.

He does not, it is true, openly avow his right to go so far as this, but in practice they feature every prolonged strike of any magnitude.

The word itself implies force; violence lurks within it. Aggression is its synonym. Henry George, himself a trade-unionist than whom labor had no better friend nor abler champion, thus characterized the strike in a letter to Pope Leo XIII:

"Aiming at the restrictions of competition—the limitation of the right to labor—its methods are like those of the army, which even in a righteous cause are subversive of liberty and liable to abuse while its weapon, the strike, is destructive in its nature both to combatants and noncombatants \* \* \* Labor associations can do nothing to raise wages but by force. It may be force applied passively or force applied actively or force held in reserve, but it must be force. They must coerce or hold the power to coerce employers; they must coerce those among their own members disposed to straggle; they must do their best to get into their hands the whole field of labor they seek to occupy, and to force other workmen either to join them or to starve." \* \* \*

We judge the strike by what we know it to be in practice. There it is war against competition. Woe to the man or the men who would take the place of the strikers. Quoting again from Henry George:

"They must do their best to starve workmen who do not join them; they must by all means in their power force back the scab as a soldier in battle must shoot down his mother's son, if in the opposing ranks, a fellow creature seeking work, a fellow creature, in all probability more pressed and starved than those who bitterly denounce him and often with the hungry, pleading faces of wife and child behind him. And in so far as they succeed, what is it that trades, guilds and unions do but to impose more restriction on natural rights; to create "trusts" in labor to add to privileged classes other somewhat privileged classes; to press the weaker to the wall."

Mr. Foster says they must be "exterminated like vermin." We must not too severely denounce this policy, for it is the inexorable consequence of the denial to the citizen of the right to work when and as he will whether he affiliates with his fellows or not. The source of our present difficulties is the failure of government to recognize and to vindicate this fundamental right, which no man of intelligence has ever publicly challenged, but to which all men have long been callously indifferent.

This is the real menace of the coal strike, and is the element which invokes the interference of the government. The miners may refuse to work and be within their constitutional rights; but while they so refuse, few men dare to continue mining and



fewer to enter that field, however dire the necessity for fuel, because of the certain danger involved. They are sure to encounter the power of the national organization, to be expressed in terms of boycott, violence, assault, and murder. Without the protection of their government, the industry is suspended. It is a basic one, and that spells the ultimate suspension of all dependent industries. Idleness, nonproduction, food and fuel scarcity, suffering, starvation, riot, lawlessness, and demoralization. Nation wide in extent are the inevitable consequences. These affect us all, everywhere. It has become the nation's business. It is its most insistent business. It will be effectually attended to whatever the cost and however we may differ regarding congressional discussion and department assurances.

Meanwhile all, I trust, will perceive in the pending strike the futility of industrial warfare. It is expensive, destructive, estranging. Only by recognizing our reciprocal rights, duties, and obligations, and the essential of every element of society and economics to the whole, by the acknowledgment of our mutual dependence and its resulting sympathy, by the humane and cordial cooperation of employer, employee, manager, farmer, capitalist, and ruler for the common good can we solve the unhappy and deep-seated problems now surrounding us and maintain our high position in the civilized world. When passion, class antagonisms, and selfishness give way to the conviction that industrial war, whatever the immediate result, means mutual disaster, the sober common sense and enlightened judgment of the common people will peacefully but effectually solve our difficulties and tide us over all domestic crises. Civilization is not a creation but an evolution. It is the fruit of spontaneous cooperation continuing through centuries. Violence can destroy but can not promote it. Thrift and production are its corner stones. I trust the minds and consciences of all men many swiftly perceive these fundamental truths, compose their differences, and begin the old life anew.

## MR. GOMPERS' REPLY<sup>1</sup>

You ask:

What is the right of a strike? If it means the right of men to quit private employment individually or collectively, everyone will concede it. No man can be made to work against his will in free America except he becomes a vagrant or convict.

<sup>1</sup> Extract from the letter of Samuel Gompers to Senator Charles S. Thomas, Congressional Record, January 5, 1920.

Very true. That is what labor contends. Then why are the miners pilloried as enemies of government. Why are they declared disloyal because they struck. You add:

But the right to quit work essentially involves the corresponding right to continue at work, and one is just as sacred as the other.

Certainly. That right is possessed by the workers. Free men can work or quit work for any reason or no reason. No one can control their labor except themselves, for it is not a commodity. It is a part of their very being. Therefore the "right" to work or not to work is inherent in the workers themselves. But the idea seems to be arbitrarily to take away this natural right by acting as if the labor of a human being is a commodity or an article of commerce.

In the attitude of labor in peace and in war in March, 1917, previously referred to, this was incorporated:

We maintain that it is the fundamental step in preparedness for the Nation to set its own house in order and to establish at home justice in relations between men. Previous wars, for whatever purpose waged, developed new opportunities for exploiting wage earners. Not only was there failure to recognize the necessity for protecting rights of workers that they might give that whole-hearted service to the country that can come only when every citizen enjoys rights, freedom, and opportunity, but under guise of national necessity labor was stripped of its means of defense against enemies at home and was robbed of the advantages, the protections, the guaranties of justice, that had been achieved after ages of struggle. For these reasons workers have felt that no matter what the result of war, as wage earners they generally lost.

Does it not appear now that the autocratic methods used during the war and accepted by the workers as a means to win the conflict are now to be continued in the interest of the employers? It is not fair. It is not right. Can such a policy be defended by honest men?

You state that "civilization is not a creation but an evolution."

More than 2,500 years ago the workers had their trade-unions. They were called collegias, and when permitted by law their activities were confined to sick and burial benefits. Wherever these collegias existed the enlightenment of the people was the greatest. For their ethics were adopted by the people as a whole. Members of these collegias 500 years before the Christian era declared, among other things, for the principle of one wife.

Since trade-unions were first formed they have sought the economic advancement of humanity. They were the pioneers in America in demanding compulsory education. Their efforts

brought safety, sanitary, and health legislation. Their every aspiration has been to bring happiness into the home. In order to make plain the position of the American Federation of Labor to the whole people, a few extracts from the proceedings of conventions will not be out of place. They are—

In 1887 it was declared:

The opportunities of the American Federation of Labor are that it may become ■ grand and powerful organization, fulfilling its great mission to bring the working people into the various organizations of the trades, to assist in the amelioration of their conditions, to raise mankind to a higher level, aspiring to ■ nobler civilization.

In 1888 this declaration was made:

The benefit the American Federation of Labor has been in the period of its existence to the toiling masses of our country is more, probably, than will be told before generations to come. There is scarcely a division of thought upon the question that the workers, being the producers of all the wealth of the world, should at least enjoy more of the results of their toil. On every hand we see fortunes amassing, elegant mansions and immense business houses rearing; we see the intricate machinery in its rotary motions the genius of man, all applied to the production of the wealth of the world; and yet in the face of this thousands of our poor, helpless brothers and sisters, strong, able-bodied, willing to work, unable to find it, hungry and emaciated, without sufficient to properly nourish the body or to maintain the mental balance. On the other hand, others bent by their long-continued drudgery and unrequited toil. While these wrongs have been upon the body politic from ages gone by, we can yet trace the improvements in the condition of the people by reason of our various organizations. Wherever the working people have manifested their desire for improvement by organization there, as with a magic wand, improvement has taken place. Wherever the working people are the poorest, most degraded, and miserable, there can we find the greatest lack of organization; and in the same degree as the basis of organization is improved, there can we see the greatest improvement in the material, and social condition of the people.

In 1902 the convention declared:

This session of the American Federation of Labor marks an episode in the progress of enlightenment unparalleled in the world's history. We meet in solid phalanx, regardless of creed, regardless of dogma; with national pride but without international prejudice. The world is our field of action, and man is our brother. We not only proclaim, under the unsullied and untarnished banner of trade unionism, but live the principles of liberty, equality, fraternity, and justice. Ours is an affiliation of men of like interests and of kindred spirit. It is the natural growth of a sentiment for unity that binds and seals the compact for harmony, fidelity, and fellowship. Our cause demands that there is no worker so deep down in the abyss of misery and despair that we dare refuse to extend a helping hand in his uplifting; that there is no high pinnacle of grandeur to which the toiling masses should not aspire to attain. The trade unions are of, by, and for the wage-workers primarily, but there is no effort which we in our movement can make but what will have its beneficent salutary influence upon all our people. The misery of the past, the struggles of the present, and the duty of the future, demand that no effort be left untried, that all energy be exercised and opportunity taken advantage of to organize the toilers of our country upon the broad platform of the trade union, in full affiliation with the American Federation of Labor. The dim, dismal past, with all its pain and travail, must give way to the better and brighter future for which the workers have borne the burdens and made the sacrifices that the people of our time, and for all time, may be truly free.

In 1906 it was said:

Who can estimate or even dream of the benefits that have accrued to the working people through the efforts of the trade-union movement as embodied in the American Federation of Labor? What has it brought in the way of better homes, better food, a less number of children of our members in the factory, mill, or shop? A wider, better, more enjoyable, and comfortable life. Who will or can measure the work of the trade-union, either in the world of industry, in our social surroundings, or in moral growth? To have seen a part of this work and accomplishments should nerve us to still greater efforts to the future.

In 1910 it was declared:

Organized labor contends for the improvements of the standard of life, to uproot ignorance and foster education, to instill character and manhood and independent spirit among our people, to bring about a recognition of the interdependence of the modern life of man and his fellow man. It aims to establish a normal workday, take the children from the factory and the workshop and place them in the school, the home, and the playground. In a word, the unions of labor, recognizing the duty of toil, strive to educate their members, to make their homes more cheerful in every way, to contribute an earnest effort toward making life the better worth living, to avail their members of their rights as citizens, and to bear the duties and responsibilities and perform the obligations they owe to our country and our fellow men. Labor contends that in every effort to achieve its praiseworthy ends all honorable and lawful means are not only commendable but should receive the sympathetic support of every right-thinking, progressive man.

But the assertion made by you that "violence can destroy but can not promote civilization" can best be answered by referring to a few of the incidents of violence that have benefited and encouraged civilization. Did not the Crusaders encourage Christianity? Did not the French Revolution advance civilization by leaps and bounds? Did not the Civil War free the slaves in the United States? This was violence in the extreme.

In labor strikes there sometimes is violence. But it is not premeditated nor committed with the consent of the trade-unions. There is always more or less violence between individuals, whether strikes are in progress or there is industrial peace.

Did not the Great War decide that men and governments should be free to work out their own destiny in a lawful way? Did not its outcome make for civilization? While we still feel its effects and the people have not been restored to their normal state of civilization, they will be advanced many years at a jump because of it.

Man is combative, and yet you must know that there is no factor in all our country so potent to decrease or prevent violence as the much misunderstood and misrepresented organized labor movement of America. A greater crowd will follow a

prize fighter through the streets than will gather to see a public official or man of great learning. Individual passions will find vent no matter whether there are strikes or industrial peace. Men who have led restrained lives can not realize the effect of red blood in healthy, energetic workingmen. Some men would rather fight than eat. When war comes the pacifists are not found among their numbers. It was to the credit of the United States that in the Great War the young men of our country were fighters. Take the right to fight for what is good away from our people and we will become a nation of pacifists. Look at China, a nation of pacifists. There are no strikes in China. Wages are very low, as they are fixed to suit the employer. The worker has nothing to say about them.

Labor men find that in most cases those who oppose the activities of the trade-unions do not appreciate that the worker is just as anxious for a better economic life as any other citizen who may or may not have to work.

Only those who have worked in the mines know the hardships endured by the miners. I would venture to say that if each Senator of the United States would become a miner for a year he would not only come out strongly in favor of their strikes, but would place the blame for the walkout where it belonged—on the coal operators.

## WHAT STRIKES HAVE COST THE MINERS<sup>1</sup>

Mr. Andrew Carnegie, who seems hungry for world-wide peace, might well devote a few of his millions to the promotion of industrial peace at home, suggests the Des Moines *Register and Leader*, calling attention to the published figures showing that in the past eleven years the United Mine Workers of America have paid over \$8,000,000 in strike benefits. This "amazing aggregate," vouched for by no less an authority than Mr. Thomas L. Lewis, who recently retired from the presidency of the Mine Workers, "represents only a small portion of the cost of miners' strikes," continues the Des Moines paper; "the loss to industry amounts to vastly more than that, and the loss to the country at large is beyond computation." It was in ad-

<sup>1</sup> *Literary Digest*. 42:295-6. February 18, 1911.



vising his associates against continuing a pending strike, notes the *Augusta Chronicle*, that President Lewis reminded them of the large cost of former troubles. These are his figures:

1900 .....	\$144,462.50
1901 .....	202,202.71
1902 .....	1,834,506.53
1903 .....	301,922.44
1904 .....	1,065,435.47
1905 .....	753,626.02
1906 .....	805,599.92
1907 .....	105,045.57
1908 .....	744,897.19
1909 .....	600,267.39
1910 .....	1,532,020.42
Total .....	\$8,089,986.16

These sums were contributed from their daily wages by miners who were working, to support others who were on strike, *The Chronicle* reminds us, and it goes on to say a word about the cost and profit of strikes:

"The miners have gained concessions, consisting in increased wages and improved conditions, during the past ten years, by striking. It is probable that they have gained more than has any other class of organized labor by that process, but it would be interesting to know just how the concessions they have gained check against the cost of the methods used in gaining them. It would probably be found that the strikers paid pretty dearly for what they got.

"The outlay in strike benefits does not include the loss in time and wages, the suffering and hardships, the long periods of idleness, frequently in midwinter, endured by the miners, most of whom are very poor. Strikes as a rule are unprofitable. Most of the unions have abandoned them, except as last resorts, and investigation would perhaps demonstrate the fact that the United Mine Workers, noted for their big and lengthy strikes, have obtained more through negotiation than through strikes.

"This is true with nearly every body of workmen. They have found strikes to be very expensive affairs, and diplomacy much less expensive and far more effective."

## THE STRIKE BALANCE SHEET<sup>1</sup>

There can be no authentic statement of the moral and economic profits and losses of the strikers and the public in the present unusual strike epidemic, and more's the pity. Some things might be settled once for all if unions, lawmakers, courts and all concerned could be confronted with the necessity of showing the soundness and utility of their policies, or going into bankruptcy, like insolvents among partnerships and corporations. It is practicable, however, to put together the profits and losses of individual strikes and to ask whether they pay.

<sup>1</sup> New York Times, April 18, 1920.



Governor ALLEN says that in thirty-three months there was an average of eleven strikes a month in Kansas. The miners lost wages of \$1,800,000 and expended \$157,000 in union dues and fines. The credit against this debit was \$778.84. Only the details are new. It is an old record that the strike method of righting labor's wrongs is financially expensive, but there is a moral credit on the public's balance sheet, through the establishment of a method of arriving at justice in industrial relations which never could have been had if the miners had not put themselves so helplessly in the wrong. The Kansas strikers demanded recognition for themselves, but refused to recognize the industrial court of the state, because, they said, it "was founded to enslave the workingman." The first decision of this court was to order an advance of wages of  $7\frac{1}{2}$  cents an hour against an offer of a 2-cent increase.

The current railway strike and the recent coal strike, it is estimated, have added \$300,000,000 to the deficit in the earnings of the railways for which the government is responsible, which the taxpayers must make good. That is only the beginning of a statement of the losses of the public, and the loss in wages by the strikers in this neighborhood alone amounts to scores of millions. If they had gained instead of lost their strike, it would have taken the increase of many months' earnings to put the strikers where they were before they struck. But, as in Kansas, the moral losses to the unions are the public profits against the inconveniences of the strike. These strikes on a national scale are "outlaw" strikes, on the unions' own statements. They are "mob movements," in the words of one union president, and there should be "no compromise with the insurgents." The unionists must see that the enemy has inflicted a great loss on them. This poison in the union vitals will be fatal unless the antidote of union discipline is administered forthwith. The danger is recognized, but the remedy is withheld. So far as known, no outlaw has been expelled from union membership.

When these labor movements are viewed in the mass instead of detail the debits to the public and the strikers are amazing. A cable message to THE TIMES last week declared that there were pending in England demands of increases of wages totaling nearly a half billion dollars at the normal rate of exchange. How can the strikers hope to extract this sum

from industry from which they have taken 34,000,000 work days, or three times as many as in 1913, and when the output per man who worked is demonstrably below easy capacity? The cable brings from France a statement that the boon of the eight-hour day to the workers has resulted in such a reduction of output, by various percentages from 20 per cent. to 50 per cent., that it is not possible to employ enough more men to maintain production. The Dominion reports that there was a strike for each working day in 1919, and that the work days lost numbered 3,942,189, against the previous maximum of 2,046,650. There has been the same loss of efficiency among the workers and of decrease in production in this country. How can labor fail to see that the starvation of industry reacts against sluggards and strikers by lessening the amount of goods to be divided, and making it impossible for the distribution to the individual to be increased? There is no more dangerous shortage than of coal, and yet the miners made holidays of the first four days of the month. In Pennsylvania in the metal trades alone in 1919 there was a loss of \$4,420,434 in wages and of 1,723,561 working days. The loss of output was more serious, but it is not known. In 1919 an incomplete list tabulated losses of wages by strikes of \$723,478,300, and of industrial losses, not labor's, of \$1,266,357,450. This at a time of the highest wages and most extravagant expenditures by workers ever known. The moral losses to labor are inestimable.

### EXPENSIVE IDLENESS <sup>1</sup>

Strikes and lockouts in 1919 cost the United States 143,850,000 days of production. To make up for this loss 4,800,000 men would have to work a month. A plant employing 1,000 workers would be able to offset this loss in about 450 years.

The direct loss of wages was close to a billion. Indirectly, through restriction of supply and the consequent higher prices, this idleness is to be charged with an additional indeterminate sum of no mean proportions.

The labor disturbances of the past year were in part the result of grievances which had arisen during the war. The first

<sup>1</sup> Editorial, Cleveland Plain Dealer, July 7, 1920.

six months of the American participation had been marked by an unusual amount of strife. A rigorous government policy and appeals to labor on patriotic grounds kept the year 1918 singularly free from serious disputes. But the signing of the armistice and the loss of morale that came with the end of hostilities threw into the year 1919 nine of the most serious labor disputes the country has ever experienced.

From this latest compilation of strike statistics there emerges one hopeful sign for the future. Violence in the disturbances is diminishing. It is attributed by the bureau of labor to the fact that fewer employers have tried to operate their plants by employing strike breakers. The fact of prohibition has also unquestionably been an important influence.

We cannot afford strikes even if they are peaceful. The country is now paying in part in the high costs of food, of clothing and of house rent for the strikes and lockouts of last year. Some means must be found for bringing the employers and the employed together before tremendous losses are incurred by both. The zone of conflict can be greatly reduced if the human side of the problem is not forgotten.

Despite the complex machinery for the settlement of disputes, the national industrial conference board has found that more strikes are ended through private conferences than in any other way. The president's recent industrial commission made recommendations directed toward the same end.

## WHAT THESE STRIKES COST YOU IN MONEY<sup>1</sup>

This has been the greatest strike year in the history of the United States. During the twelve months following Armistice there were more than *three times* as many strikes as in the same period four years earlier. \* \* \*

A strike is like a pebble thrown into a pool of water. The loss it causes in wages to the strikers and in profits to their employers is only the first small circle in the series of larger and larger ones, which spread and widen until they reach the uttermost boundaries of the pool.

It is impossible for any strike to take place in modern industry without causing these innumerable and widening circles

<sup>1</sup> Roger W. Babson. American Magazine. 89:9. February, 1920.

of loss. In the two months mentioned—August and September, 1919—I have records of strikes involving ninety different trades.

Not only did the strikers lose their wages and the employers lose their profits, but the country did not get the goods which should have been produced. Of course, we the consumers, kept the money we should have paid for these goods if they had been made. But not for long! Because we had to pay *more* for what we did get because of the scarcity.

To give you some idea of what this loss was—and remember this is only the second of those circles of loss—here is a table showing the approximate number of employees affected in some of the strikes and the average number of days of idleness resulting (The steel strike is not included, although it began in September.):

<i>Industries</i>	<i>Number of Employees Affected</i>	<i>Days Lost</i>
Metal trades .....	49,150	1,081,300
Shipbuilding .....	50,000	1,100,000
Coal mining .....	10,000	220,000
Textiles .....	50,250	1,105,500
Lumber .....	2,000	44,000
Clothing .....	16,000	352,000
Hats .....	3,250	71,500
Shoes .....	3,500	77,000
Railroads .....	1,750	38,500
Foods .....	1,550	34,100
Public Service .....	2,550	56,100
Building Trades .....	45,000	990,000
Retail coal .....	500	11,000
Water transportation ..	1,200	26,400
Paper .....	750	16,500
Rubber .....	4,000	88,000
Laundries .....	250	5,500
Tobacco .....	4,250	93,500
Publishing .....	1,200	26,400

Just to show you the effect of this idleness, here are figures showing the loss in production in a few of the above industries during only nine months:

<i>Industries</i>	<i>Amount of Production Lost</i>
Coal mining .....	1,751,740 tons bituminous
Retail coal .....	1,048,740 tons anthracite
Hats .....	616,300 tons undelivered
Shoes .....	88,000 machine-made women's hats
Garment trade .....	1,768,800 pairs men's
Lumber .....	15,886,500 men's shirts
	19,183,800 pairs overalls
	8,294,000 board feet

This decrease in production directly affects you in two ways: Because of it you actually have less—and you pay more for

what you do have. But for the strikes there would have been about two million more pairs of men's shoes, for example, an item not to be lightly regarded.

But here is another feature of the situation which must be taken into account: There were *threatened* strikes and *partial cessations* of work which did not reach the stage of an actual walkout. This is forcibly illustrated by a report of the Secretary of Labor for a previous year. During a period when there were 281 actual strikes, he refers to 212 additional controversies. These controversies closely parallel the strikes themselves. And while they do not cause as great a loss in production they do very materially reduce the output. This must not be omitted in calculating the direct loss.

All of these direct losses, however, form only the smallest of the circles which widen around a strike. Here is another one: If a strike takes place in an industry, it reacts on every other industry that contributes in any way to it.

For instance, a strike in the garment trades reacts on the textile mills—the makers of silks, velvets, woollens, cotton fabrics may be forced to quit work.

A strike in the shoe factories reaches back to the leather workers, the tanneries, the makers of chemicals, the shops where shoe machinery is manufactured. A printing strike reacts on the paper-mill workers and the ink makers. A building strike cuts down the work for countless other employees in a score of trades—metal workers, lumber producers, employees in cement mills, in brick yards, in tool factories.

For every day of idleness caused in a plant that is on strike, there is another day of idleness caused by the resulting loss of work to other men and women who would normally be busy making materials to be used in that plant. And *their* loss is not made up, even though the strikers win.

And a strike involves not only the direct *producers* of these materials, but every person concerned in selling them and in transporting them. The loss is felt at every step.

This is the *backward* reaction of a strike. But it does not complete the story, by any means. There is also what we may call the *forward* reaction. For example, a strike in the textile mills affects every industry which must have these textiles in order to continue. It slows up the garment trades. It may cause some of these shops to close, throwing their own work-



ers out of employment. Not only that, but it increases the *cost of all textiles*, even those already manufactured, because the supply is reduced. This is immediately reflected in the increased price of clothing.

The cost of a serious coal strike is almost beyond computation. Practically every industry in the country pays part of the price. If plants are shut down for lack of fuel, every worker in those plants can charge the coal strike with so many days' wages, *his* wages. It has cost him a new pair of shoes, or a new suit, or a sack of flour, in addition to making his own winter supply of coal scantier and more expensive.

You might think that a street-car strike would not have this particular reaction, but just think it over. Take a subway strike in New York City, for instance: Hundreds of thousands of workers are unable to reach their shops, or stores, or offices. They may lose only an hour or two, or they may lose a whole day of work. And lost work is lost money! For work means production. And reduced production inevitably means increased cost of living.

For example, here is one of many outside losses caused by the printing strike in New York City: Some of the shops closed had a large business in printing catalogues for commercial firms. It is the custom of some of these firms to depend almost wholly on these catalogues to sell their goods.

The whole manufacturing program of hundreds of these concerns was held up because they could not get out their catalogues. It is estimated that these firms employ over 500,000 people, and indirectly give work to 1,000,000 others. Thus, the strike of only a few thousand men in one industry affected 1,500,000 in other lines of production. And remember that back of this 1,500,000 are still *more* men and women whose work and earnings suffered.

It is these *indirect* losses which make the cost of strikes so tremendous. They go out in endless ramifications, which finally reach into the pockets of practically every one of us. Everybody has *some* loss to make up because of them. And when everybody starts to make up losses, the level of all costs rises.

Take the harbor strike in New York City in October: perishable food, which could not be delivered, and which therefore spoiled, was a total loss to the shippers, or the consignees, as the case might be.



Take the harbor strike in New York City in October: Perishable food, which could not be delivered, and which therefore spoiled, was a total loss to the shippers, or the consignees, as the case might be.

In the third week of this strike, the shipping authorities estimated that it was costing \$1,500,000 a day! And this was aside from the expense of maintenance and interference with other branches of business. There were 625 vessels tied up in the port of New York. Many of these idle ships, tied up to the docks, were costing their owners from \$300 to \$1,000 a day for dock rental. This was in addition to money paid out for idle officers and crews, and the other expenses which went right on, without any income to offset them.

Here is just one curious instance of the way strikes affect you in ways you do not suspect: Because of the tie-up of shipping, the supply of quinine ran short, and there was great anxiety over this shortage in case the influenza epidemic broke out again. Many other drugs were scarce for the same reason, and higher prices for them were predicted. Over \$3,000,000 worth of essential oils were held up, and many of them became very scarce.

Building materials were delayed, with the result that contractors lost money, workmen were idle, and the construction of new houses, stores, and offices—the only solution of the high-rent problem—was held back.

As another illustration of how these circles of loss widen out, let us take the police strike in Boston:

The striking police force numbered about 1,200, men. If we suppose that these policemen have families, taking the usual average of five members, there were 6,000 persons directly affected in that one group. But this is only a starter. In the second circle, those indirectly affected, we find the 5,000 state guardsmen who were called out to take the places of the policemen.

Most of the guardsmen have dependents of their own. But even suppose that the employers of these men continued to pay them while they were on duty in Boston, thus preventing their families from suffering. As a matter of fact, many of the men did lose work or pay, and a fund of around \$1,000,000 was raised by public subscription to care for those dependent on them.

But in any case, their work was lost. Many employers paid men and received nothing in return. The men who had not been employed lost what they might have earned. And the people as a whole were deprived of what these men would have produced.

Even this does not complete the cost account. We have still to reckon the merchants and other business concerns affected by the absence of protection during the days of rioting. There was actual loss of property; and there was an even greater loss due to the disorganization of the whole population. That one strike has cost the people of Massachusetts at least several million dollars.

## WHERE DO THE PEOPLE COME IN<sup>1</sup>

New York City's "milk strike" is ended. The milk distributors have capitulated. The farmers are to get a cent more a quart for their milk for the next six months. Ultimately, of course, the public will pay the extra cent. For that is its chief function and privilege as "ultimate consumer."

For several weeks now the people of New York and surrounding towns have been sadly inconvenienced by the stoppage of a good share of their usual milk supply. The inconvenience has among the poor—who are wont to get the heaviest blows from any dislocation of industrial and commercial processes—risen to the point of actual suffering.

It was not a "strike" at all. It was a refusal on the part of an organized group of milk producers to sell their milk except at an advanced price. This action met head-on the counter refusal of the companies who distribute the milk from door to door to pay the increased price. There are three great milk companies in New York that dominate the distributing business. It does not appear, so far as we are aware, that they acted in combination against the demands of the farmers. But for several weeks they continued to take the *same* action; and when one company finally yielded, the others did the same immediately. They were in effect allies, even tho there were no articles of agreement between them.

The public stood by, helpless, and suffered while two groups in the community fought out their commercial dif-

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<sup>1</sup>Independent. 88:139. October 23, 1916.

ferences. The situation was precisely similar to that which occurs when an industrial strike takes place, with business man and farmer taking the place of employer and workingman.

In both cases the method of settling the dispute is intolerable.

The interests of no group in the community are more important than the public interest. The well-being of all should never be permitted to suffer because some special portion of the whole is seeking its own well-being in its own way. The public should never be put in the position of the "innocent bystander" at a street fight, who often receives the severest injuries.

The welfare of the people is paramount. Of course, farmers are people as well as tillers of the soil and herders of cattle. Of course, also—tho it takes a little more temerity to assert it—the managers and stockholders of milk companies are people as well as distributors of a necessity of life. So their welfare cannot be ignored, if we would. But, after all, there are more people who are consumers of milk than people who produce it and distribute it. It is their welfare that must be the community's first and highest thought.

The problem, then, is to find some method of settling disputes between producers and distributors of the necessities of life that does not cause the public inconvenience and suffering. The community, whether it be the city, the state, or the nation, must compel the disputants to settle their differences peaceably. It must make it its business to see that the producer obtains justice while the distributor does not suffer injustice, just as it must see in the industrial field that the workingman obtains justice while the employer does not suffer injustice.

## BRIEF EXCERPTS

The public has no rights which are superior to the toiler's right to live and to his right to defend himself against oppression.—*Samuel Gompers, in a statement, June 6, 1920.*

In any basic industry, when labor and capital are at strife, it is not a duel but a nation-wide war, in which the public has the predominant interest.—*New York Times (editorial) June 20, 1920.*

It is to me a monstrous thought that capital and labor

can without let or hindrance starve and freeze and ruin the people in a struggle for supremacy.—*Senator Charles E. Townsend. Congressional Record, December 17, 1919.*

When men strike on a job they devote their minds to doing as little as possible in a day and doing that little as badly as ingenuity will devise. Almost any employer prefers an out and out strike with rioting and violence to the insidious crippling of the "strike on the job."—*John Leitch. Man to Man, p. 17.*

An incomplete list of direct losses due to strikes in 1919 places the cost to labor in wages at nearly \$765,000,000 and to industry at more than one and one-quarter billion dollars, Francis H. Sisson, vice president of the Guaranty Trust Co. of New York, told the Silver jubilee convention of the national association of manufacturers today.—*Cleveland Plain Dealer, May 19, 1920.*

The evil possibilities of the boycott appear most plainly when we consider the boycott sometimes maintained by employers against the employment of workmen who have made themselves obnoxious by activity in strikes or in the organization of new unions. This form of boycotting is usually called blacklisting.—*Adams and Sumner. Labor Problems. p. 200.*

I feel it is my duty in the public interest to declare that any attempt to carry out the purpose of the strike [Bituminous coal strike of 1919] and thus to paralyze the industry of the country, with the consequent suffering and distress of all our people, must be considered a grave moral and legal wrong against the government and the people of the United States.—*Statement by President Wilson. October 25, 1919.*

The essence of the boycott is the intent to injure. This injury may be inflicted for mere revenge, or it may be inflicted with the ultimate purpose of accomplishing the most laudable and desirable improvement in the conditions of employment. But in either case, say the courts, the primary object is injury, the intent consequently malicious, and the combination in turn illegal.—*Adams and Sumner. Labor Problems. (8th edition) p. 198.*

The cost of this [Switchmen's] strike, short as it has been, has been enormous. It cut deeply into railroad earnings and thereby will cost the government millions of dol-

lars. Hundreds of factories and mills were forced to close down for want of materials and thousands of workmen were thereby made idle. The strike has been all loss and no gain. The switchmen have lost what it will take years to regain, public confidence.—*Buffalo Evening News*. April 19, 1920.

The "walking delegate" is the business agent of local unions in the building trades. He goes about from building to building to see that union rules are not being violated by contractors, and has power to call instant strikes on his own initiative. This concentration of power in the hands of the "walking delegate," with its opportunities for graft, has earned him much public reproach.—*Cyclopedia of American Government*. vol. 3, p. 638.

Since the war we have had a perfect carnival of strikes in this country, some of them of huge dimensions, nearly all of them attended to a greater or less degree by violence and the destruction of property, and every one of them menacing, more or less seriously, every American citizen desiring to continue to work or to take the place of some of these men.—*Senator Charles S. Thomas*. *Congressional Record*, December 18, 1919.

The charge that all but four newspapers in the United States are controlled by the International Typographical Union and that through its local chapters the union maintains a censorship over news unfavorable to labor was placed suddenly today before the Senate committee investigating the shortage of newsprint paper. The man who made this startling accusation was Earl J. McCone, General Manager of the Charles A. Finnigan Company of Buffalo, which controls The Buffalo Commercial and the Hall-Richter Paper Company.—*New York Times*. May 5, 1920.

"We are out to stay until we get a readjustment in wages. We have been back at work for ten days and no action has been taken by the Labor board relative to our grievances." So says the local leader of the strikers. "We insist that we must have more money and will not work until the railroads see fit to give it to us." The need of adjustment of railroad wages was in evidence before the first strike. The strikers lost eleven days' pay then. Now they propose to lose more pay rather than continue to work for what they are getting. If they must have more money, how is it that they can af-



ford thus frequently to suspend work?—*Buffalo Times*. May 1, 1920.

The law which we passed in the Kansas Legislature was not a law against union labor, and the strike which was brought on which caused such horrible economic waste was not altogether the fault of union labor; that the coal operators, the men who owned the mines were equally guilty with the miners. I have seen industrial controversy waged in that territory for twenty-five years, and in all the industrial controversies I have witnessed I have never yet heard from either side one expression of comradely brotherhood, never.—*Gov. Henry J. Allen. Law and Labor*. 2:85. April, 1920.

Fred G. Biedenkapp, organizer for the One Big Union and secretary-treasurer of the Brotherhood of Metal Workers, said the other day:

"The hour draws near for the revolution. Already are 2,000,000 organized into the One Big Union which shall accomplish the revolution. Daily our numbers grow as unsuccessful strike follows unsuccessful strike. Therefore we of the vision encourage strikes—that they may fail." Here is a candid confession of rejoicing over the failure of strikes which these intriguers "of the vision" themselves have provoked!—*Buffalo Currier*. May 15, 1920.

The proposed [coal] strike, if carried to its logical conclusion, will paralyze transportation and industry. It will deprive unnumbered thousands of men who are making no complaint about their employment of their right to earn a livelihood for themselves and their families, will put cities in darkness, and, if continued only for a few days, will bring cold and hunger to millions of our people; if continued for a month, it will leave death and starvation in its wake. It would be a more deadly attack upon the life of the nation than an invading army.—*Attorney General Palmer*, October 27, 1919. *Law and Labor*. 1:10. December, 1919.

News from all directions is to the effect that the latest railroad strike is practically over. What an inexcusable and costly folly it has been. Think of the millions lost in wages, and the far greater losses in the interruption of the industries, productive processes and general business of the country, the harmful inconveniences and industrial distress!



Then there is another item of loss amounting easily to \$50,000,000 in the reduction of the revenues of the railroads—a loss which under the new federal railroad law must be made good by an advance of freight rates to be paid ultimately by the consumers, the mass of the people!—*Buffalo Courier*. April 19, 1920.

But the “neutral” in industrial warfare, like the “neutral” in international warfare, is securing a standing in court. In the recent milk strike in New York—a strike, be it observed, called not by the proletariat, but by capitalists, i. e., farmers, owners of real estate—an attempt by capitalists to fix the price of milk by collective bargaining, upon the ground, indeed, that the farmer (a capitalist) was not earning a “living wage”—at the very moment that these capitalists were practising sabotage, overturning and emptying milk cans in the up-state highways, the babe in its mother’s arms, dependent for its life upon this wasted milk, cried out its neutral protest.—*J. H. Cohen in Proceedings of the Academy of Political Science*. 7: 116. January, 1917.

The total number of labor strikers between the date of our declaration of war and the date of the armistice in this country was 2,386,285. Now, when we consider that the total number of men sent to France was 2,053,347, it follows that the army of strikers during that period exceeded the army of fighters during that period by about 350,000 men; and that was a time, Mr. President, when the energy and the labor of every citizen was sadly and sorely needed, when every impulse of duty and patriotism combined to keep the home fires burning, that the boys across the sea might need nothing essential to their supreme and heroic task, notwithstanding which these are the appalling figures.—*Senator Charles S. Thomas. Congressional Record*, December 18, 1919.

In the course of the argument by Henry Warrum, attorney for the defendants, against the continuance of the injunction and the issuance of an order compelling the withdrawal of the strike order, the Court [Judge Anderson, U. S. District Court, Indiana] said:

“The restraining order ought to be made a temporary injunction and a direct order to revoke the strike order ought to be added. Of course, if your clients don’t like it that way, I’ll make them obey it.

"There cannot be an imperium in imperio in this country, as counsel for the government has said. The government is supreme even over a labor union, and superior to it.

"I think this strike is about the most lawless thing I have seen in this country. If it goes on I think it is rebellion. That is what I think it is."—*Law and Labor*. 1:4. December 1919.

This Republic contains something like 110,000,000 men, women, and children. The great city of New York, perhaps now, with its suburbs in New Jersey and on Long Island, the largest city in the world, except it may be London, contains something like five or six million people. Probably something more than one-half of that population are women and children, and one-tenth of that population are children, little babies seeking the milk bottle or their mother's breast—and under the new order of modern women, under the new civilization, they seek their mother's breasts almost in vain, and must have milk bottles. If a man comes to me and tells me that upon some theory or other he has a right to stop the transportation of milk to those babies in New York, I tell him when he says it that he is a self-confessed murderer of children.—*Senator John Sharp Williams. Congressional Record, December 18, 1919.*

Hon. Elihu Root in outlining a Republican policy recently said:

If we are to maintain the principles of our government of all the people by all the people, we must apply those principles now to this situation. If we are a self-governing people we must govern and not be governed. We should not attempt to make any man work against his will. We should not attempt to take away the right to strike. It is Labor's great protection. But we should by law limit the right to strike at the point where it comes in conflict with the communities' higher right of self-protection. No man and no set of men can justly claim the right to undertake the performance of a service upon which the health and life of others depend and then to abandon the service at will. The line between such a performance and an ordinary strike should be drawn by law.—*World's Work*. 39: 531. April, 1920.

This [coal] strike is an unconscionable and brutal menace to the happiness, the comfort, yes, the lives, of hundreds of

thousands of American citizens—men, women, and children—in no way a party to the existing controversy and in no manner responsible, not even in the slightest degree, for the conditions, actual or imaginary, which brought about this crisis. Thus the strike in this instance is an exhibition of inhuman selfishness which should awaken the indignation and arouse the antagonism of every right-thinking American citizen. Secondly, this strike, under the circumstances which characterized its inception, and those attendant upon its subsequent conduct, has involved such an obvious rebellion against the law of the land and against the authority of the United States government that we may well take pause to consider whether or not the seeds of revolution in this country have not only been planted but that the harvesting time is now at hand.—*Senator Joseph S. Frelinghuysen. Congressional Record, December 8, 1919.*

As a result of class legislation in favor of wageworkers, there has grown up in this country an inner government. It is inside of the regular or constitutional government. It is not an invisible government. It is very visible. It does not operate under the surface or behind the scenes. It is bold and open and very much aboveboard. The inner government consists of combined organized labor, and it is a grave question if the inner government to-day is not superior to and more powerful than the constitutional government. The inner government issues edicts and makes demands, and in the past they have largely been honored by the constitutional government. If this is to continue constitutional government can not survive. In my opinion, it is timely and opportune to determine whether or not this shall continue until it may reach the point of the utter subversion or destruction of constitutional government. Shall the inner government or the constitutional government rule? The time and the opportunity to make the test are now at hand.—*Senator Henry L. Myers. Congressional Record, December 8, 1919.*

With the growth of large labor unions, and with the increase in the resources of individual employers and groups of employers, the interest of the public in these industrial conflicts became more vital. It was soon felt that in many strikes the public suffered more acutely than either contestant. For instance, during the recent [1902] coal strike both

operators and miners commanded sufficient resources to enable them to hold out almost indefinitely, while the public would have suffered irreparable injury and untold hardship, had the strike lasted but two or three months longer. A strike of a month's duration upon all the railroads centering in Chicago would not, perhaps, affect the bonds and stocks of the corporations more seriously than a complete failure of the crops, and the workmen themselves could bear the strain quite easily. Long before the month had elapsed, however, the country would be in the throes of a frightful crisis, and steps would probably be taken by the state or national government to put an end to a contest in which the interest of the public was not only as great as, but infinitely greater than that of either combatant.—*John Mitchell. Organized Labor. p. 337.*

The serious economic waste involved in marine and shipyard strikes during the period of reconstruction has recently been investigated by the United States Shipping Board.

Since the 1st of January it is estimated that strikes have cost the Shipping Board a total of \$37,000,000. There are included marine and harbor strikes, longshore strikes, and shipyard strikes. These have occurred on the Atlantic, Pacific, and Gulf coasts, but the results of the coal strike are not included.

There are not included losses by foreign or privately operated American vessels, nor indirect losses to the public due to interruption of regular movement of shipping. Among such indirect losses are those due to congestion in port, and on inland transportation systems, spoilage of perishable cargo, and delays of food supplies needed in this country and abroad.

The marine strikes include that on New York Harbor craft, tying up some 600 boats with approximately 16,000 men out for 13 days. A further marine strike occurred in July with a general tie-up of shipping on the Atlantic and Gulf coasts. Some 25,000 men were out for about three weeks.

A longshore strike in New York during October involved 40,000 to 50,000 men for about 30 days. A further longshore strike occurred at New Orleans in the same month, lasting 31 days.

Among the 200 strikes in the shipyards one of the largest was that in the Northern Pacific district beginning in January, lasting for 50 days and involving some 40,000 men. A further strike occurred in the San Francisco Bay and southern district in October, lasted 30 days and involved 35,000 men. A strike in the shipyards in the New York district began in October, lasted about 30 days, and involved some 20,000 men.—*Statement issued by the United States Shipping Board, December 6, 1919.*

In cases where strikes fail of their purpose, the American Federation of Labor, with a constitution providing for boycotting, has elaborate and powerful boycotting machinery available to each affiliated union in its efforts to enforce the closed shop. The Federation has a total membership [1912] of nearly 2,000,000 members, controlling a purchasing power of 10,000,000—over a tenth of our entire population. This membership is enjoined to observe all boycotts under penalty of fines or expulsion, and is divided and sub-divided into national trade unions, some 30,000 local unions, over 500 city federations, and some 30 state federations. The 500 city federations are local federations of all the unions in a particular city, while the state federations hold the same relation to all the unions in a particular state. Thus the organizers of the American Federation of Labor, of which there are about 1400, and the organizers of the different trade unions, can at any time command the entire organized force of all labor unions in a city or all labor unions in a state, in their efforts to prevent a local dealer handling merchandise produced by an open shop employer. With agents in every trade center of the country and local federations of all trades to act at their commands, with travelling agents going from city to city, and spies to detect open shop shipments and telegraph the information to the unions at the place of consignment,—so we have a phenomenon hitherto unknown in either democratic or despotic states, with its branches like veins throughout our entire society. When we reflect on the utter impossibility of escaping from the observation and tyranny of this movement in any remote section of the country where it may choose to pursue, and remember that it is largely designed and manipulated to eliminate the non-union worker from industry, our feelings change to alarm. All other at-

tempts at secret orders and societies or the conduct of organized feuds pale into insignificance before the ramifications, power and aspirations of this institution. The idea staggers the imagination, for it discloses the irresistible machinery of an army of well-disciplined men against which the non-conformist is helpless.—*League for Industrial Rights. Pamphlet entitled "The Closed Shop" by W. S. Merritt. p. 5.*

STRIKES AND LOCKOUTS IN THE UNITED STATES<sup>1</sup>

1916-1918

Year	Strikes	Lockouts	Total
1916 .....	3,678	108	3,786
1917 .....	4,233	126	4,359
1918 .....	3,181	104	3,285
Total.....	11,092	338	11,430

<sup>1</sup> Monthly Labor Review. 8:1858. June, 1919.

RESULT OF STRIKES AND LOCKOUTS IN THE UNITED STATES<sup>1</sup>

	1916	1917	1918	1918	1917	1916
In favor of employers .....	724	366	417	21	13	5
In favor of employees .....	733	581	591	16	17	15
Compromised .....	766	679	659	11	21	17
Employees returned pending arbitration	70	131	198	3	6	5
Not reported .....	99	142	212	2	1	21
Total .....	2,392	1,899	2,077	53	58	63

<sup>1</sup> Monthly Labor Review. 8:1863. June, 1919.

STRIKES AND LOCKOUTS SETTLED<sup>1</sup>

UNITED STATES 1901-1905

## S T R I K E S

## L O C K O U T S

Year	Number	Number settled by joint agreement	Number settled by arbitration	Number	Number settled by joint agreement	Number settled by arbitration
1901 .....	2,924	149	49	88	10	2
1902 .....	3,162	204	58	78	11	1
1903 .....	3,494	246	66	154	18	3
1904 .....	2,307	130	23	112	17	2
1905 .....	2,077	74	27	109	10	3
Total .....	13,964	803	223	541	66	11
Per Cent. ....	100	5.75	1.6	100	12.2	2.3

<sup>1</sup> Twenty-first [1906] Annual Report of the U. S. Commissioner of Labor. p. 85.



I have received from L. W. Hatch, chief statistician of the New York state industrial commission, the following table of working time lost in strikes and lockouts in New York State for the ten years 1906-1915 inclusive:

WORKING TIME LOST IN STRIKES AND LOCKOUTS IN  
NEW YORK STATE

<i>Year Ended September 30</i>	<i>Number of strikes and lockouts</i>	<i>Aggregate days of working time lost</i>
1906	245	1,668,281
1907	282	1,724,260
1908	160	396,725
1909	176	1,061,094
1910	250	5,783,394
1911	215	2,360,092
1912	184	1,512,234
1913	268	7,741,247
1914	123	1,426,118
1915	104	868,838

This shows a total aggregate number of days of working time lost amounting to 24,542,283. If we assume an average of but \$2 a day, this means a loss in this period in the state of New York in wages alone of \$49,084,566. *Julius H. Cohen. Proceedings of the Academy of Political Science. 7:122. January, 1917.*

LOSSES THROUGH STRIKES AND LOCKOUTS <sup>1</sup>  
UNITED STATES 1881-1900

	<i>Wage loss to employees</i>	<i>Assistance to employees by labor organi- zations</i>	<i>Loss to employers</i>	<i>Total loss</i>
1881 .....	\$3 391,097	\$291,149	\$1,926,443	\$5,608,689
1882 .....	10,330,573	782,007	4,381,476	15,494,056
1883 .....	7,343,692	563,486	4,993,124	12,900,302
1884 .....	9,088,127	721,898	4,033,920	13,843,945
1885 .....	11,564,421	555,315	4,844,370	16,964,106
1886 .....	19,273,511	1,671,582	14,307,306	35,252,399
1887 .....	20,794,234	1,277,400	9,518,231	31,589,865
1888 .....	<b>7,477,806</b>	<b>1,838,599</b>	<b>7,726,216</b>	<b>17,042,621</b>
1889 .....	<b>11,789,408</b>	<b>707,406</b>	<b>3,243,877</b>	<b>15,740,691</b>
1890 .....	14,833,304	987,495	5,621,662	21,442,461
1891 .....	15,685,214	1,182,752	6,793,576	23,661,542
1892 .....	13,628,635	1,371,558	6,840,771	21,840,964
1893 .....	16,597,449	927,451	4,440,615	21,965,515
1894 .....	39,168,301	1,091,296	19,964,713	60,224,310
1895 .....	13,836,533	626,866	5,656,437	20,119,836
1896 .....	11,789,152	523,520	5,661,770	17,974,442
1897 .....	18,052,510	768,490	5,166,731	23,987,731
1898 .....	10,917,745	632,326	4,835,865	16,385,936
1899 .....	16,643,139	1,882,671	7,822,772	25,688,898
1900 .....	34,478,372	1,222,987	14,879,229	51,240,272
Total .....	\$306,683,223	\$19,626,254	\$142,659,104	\$468,968,581

<sup>1</sup> Sixteenth [1901] Annual Report of the U. S. Commissioner of Labor. p. 24.

STRIKES IN COAL MINES <sup>1</sup>

Year	Men on strike	Days lost
1906	372,343	19,201,348
1907	32,540	462,392
1908	145,145	5,449,938
1909	24,763	723,634
1910	218,493	19,250,524
1911	41,413	983,737
1912	311,056	12,527,305
1913	135,395	3,049,412
1914	161,720	11,013,667
1915	67,190	2,467,431
1916	170,633	3,344,586
1917	158,360	2,311,250

<sup>1</sup> *Statistical Abstract of the United States* 1918, p. 275.

STRIKES AND LOCKOUTS IN THE UNITED STATES <sup>1</sup>  
1881-1905

Calendar Year	Number of Strikes	Number of Lockouts	Average Days Duration per Establishment		Strikers	Employees Locked Out	Employees Thrown Out of Work
			Strikes	Lock-outs			
1881	471	6	12.7	32.2	101,070	655	130,176
1882	454	22	21.9	105.0	120,860	4,131	158,802
1883	478	28	20.6	56.8	122,198	20,512	170,275
1884	443	42	30.4	41.4	117,313	18,121	165,175
1885	645	50	30.0	28.0	158,584	15,424	258,129
1886	1,432	140	23.3	32.2	407,152	101,980	610,024
1887	1,436	67	20.9	49.8	272,776	57,534	439,306
1888	906	40	20.3	74.9	103,218	13,787	162,880
1889	1,075	36	26.2	57.5	205,068	10,471	260,290
1890	1,833	64	24.2	73.9	285,900	19,233	373,499
1891	1,717	69	34.9	37.8	245,042	14,116	329,953
1892	1,298	61	23.4	72.0	163,490	30,050	238,685
1893	1,305	70	20.6	34.7	195,008	13,016	287,756
1894	1,349	55	32.4	39.7	505,049	28,548	690,044
1895	1,215	40	20.5	32.3	285,742	12,754	407,188
1896	1,026	40	22.0	65.1	183,813	3,675	248,838
1897	1,078	32	27.4	38.6	332,570	7,651	416,154
1898	1,056	42	22.5	48.8	182,067	11,038	263,219
1899	1,797	41	15.2	37.5	308,267	14,698	431,889
1900	1,779	60	23.1	265.1	399,656	46,562	567,719
1901	2,924	88	20.2	27.0	306,280	16,257	563,843
1902	3,162	78	25.4	158.9	553,143	30,304	691,507
1903	3,494	154	29.1	53.5	531,682	112,332	787,834
1904	2,307	112	35.5	69.4	375,754	44,908	573,815
1905	2,077	109	23.1	41.7	176,337	68,474	302,434
Total....	36,757	1,546	25.4	84.6	6,728,048	716,231	9,529,434

<sup>1</sup> Twenty-first [1906] Annual Report of the U. S. Commissioner of Labor.

PART II

COMPULSORY ARBITRATION AND  
COMPULSORY INVESTIGATION  
OF INDUSTRIAL DISPUTES



## GENERAL DISCUSSION

### INDUSTRIAL CONCILIATION AND ANTI-STRIKE LEGISLATION RELATING TO PUBLIC UTILITIES IN VARIOUS COUNTRIES<sup>1</sup>

The following brief summary of the conciliation and anti-strike provisions of the laws of various countries is compiled from a publication of the British Board of Trade on strikes and lockouts, issued in 1912, and a report of the chief inspector of factories of Victoria on the antistrike legislation throughout the Australian States, published in 1915, verified by an examination of the original texts and supplemented by an examination of the more recent legislation. The summary is reproduced here on account of the numerous inquiries for information which have recently come to the bureau.

#### COMMONWEALTH OF AUSTRALIA

*Legal machinery for the adjustment of disputes.*—Court of conciliation and arbitration, consisting of a president, who is a member of the Federal Supreme court and judges of the Federal or a State supreme court, appointed by the president as his deputies. Provision is also made for conciliation committees of equal numbers of employers and employees; assessors representing the parties appointed by the court to advise it and local industrial boards, equally representative of workers and employers, presided over by a judge of the supreme court of the Commonwealth or supreme courts of the States. The procedure is varied. The president of the court may summon parties to a dispute and by conference aim to reach an amicable settlement, or there may be an investigation as the basis of an amicable settlement, or temporary reference of a matter to a conciliation committee or local industrial board. All amicable settlements have the force of a formal award.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—The initiation or continuance of any strike or lockout by any organization or person is prohibited.

*Penalties for enforcement of antistrike legislation.*—Penalty of £1,000 (\$4,486.50) against any person or organization responsible for a strike or lockout.

#### NEW SOUTH WALES

*Legal machinery for the adjustment of disputes.*—In New South Wales the law is similar to that of the Commonwealth and of Queensland in that there are both an industrial court (which is a superior court and a court of record) and industrial boards for groups of industries or callings, awards by the latter being subject to amendment, variation, or rescission by the court.

<sup>1</sup> Monthly Review of the Bureau of Labor Statistics. 4:11-19. January, 1917.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts of all kinds are prohibited. An injunction may be issued by the industrial court.

*Penalties for enforcement of antistrike legislation.*—Employer liable to a fine of £1,000 (\$4,866.50); worker liable to a fine of £50 (\$243.33), which is a charge on his wages. If striker was member of a union, it may be held liable for not exceeding £20 (\$97.33) of the penalty. Penalty on union for aiding or instigating strike is £1,000 (\$4,866.50).

#### QUEENSLAND

*Legal machinery for the adjustment of disputes.*—Industrial court administered by a judge appointed by the governor in council. Local industrial boards are also created on the application of a prescribed number of employers and employees. The court has jurisdiction over certain classes of cases directly and over others on appeal from industrial boards.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—In the case of public utilities, strikes and lockouts are illegal unless a conference has been held before an industrial judge and proved abortive and unless 14 days' notice has been given after termination of conference and a secret ballot has been taken. In all other cases 14 days' notice must be given and a secret ballot taken.

*Penalties for enforcement of antistrike legislation.*—A fine of £1,000 (\$4,866.50) may be levied on employer or union and £50 (\$243.33) on worker. If worker is member of a union, not to exceed £20 (\$97.33) of the penalty may be levied against the union. Penalties are made a charge on wages and on funds of associations.

#### SOUTH AUSTRALIA

*Legal machinery for the adjustment of disputes.*—The judge of the industrial court brings parties together when any dispute occurs, and may make an award in trades where there is none in force, or may change an existing award. When sitting to make a final adjudication, two assessors, representing the respective parties to the dispute, assist the judge if he thinks fit.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—All strikes and lockouts are illegal.

*Penalties for enforcement of antistrike legislation.*—A fine of £500 (\$2,433.25) may be levied against an association and a similar fine of £500 (\$2,433.25) against a person, or three months' imprisonment. Fine of £20 (\$97.33) or three months' imprisonment for picketing. Fines are made a charge against funds of associations and on wages over and above £2 (\$9.73) a week. An employer who refuses to employ or a worker who refuses to accept work where there is an industrial agreement or award in operation may be fined.

#### TASMANIA

*Legal machinery for the adjustment of disputes.*—Governor appoints wages boards. Determination of wages boards may be suspended by the governor, and the boards are then required to review their action. Appeals may be taken from the wages boards to the supreme court. No provision is made for conciliation.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—All strikes and lockouts in wages boards trades on account of any matter as to which a determination has been reached.

*Penalties for enforcement of antistrike legislation.*—A fine of £500 (\$2,433.25) may be levied against an organization and £20 (\$97.33) against an individual.

#### VICTORIA

No legislation.

#### WESTERN AUSTRALIA

*Legal machinery for the adjustment of disputes.*—The court of arbitration consists of a judge of the supreme court and two representatives from employers and employees, all three being appointed by the governor.



No provision is made for local tribunals, and matters come directly before the court of arbitration or the presiding judge.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts are illegal. An employer can not discharge a worker nor can a worker cease work (1) before a reasonable time has elapsed for matter to be dealt with by the court, or (2) during the time the proceedings in court are pending.

*Penalties for enforcement of antistrike legislation.*—A fine of £100 (\$486.65) may be levied against industrial union or employer, and of £10 (\$48.67) against worker.

## NEW ZEALAND

*Legal machinery for the adjustment of disputes.*—A court of arbitration, consisting of three members appointed by the governor to serve for three years; one "judge of the court," to have the tenure, status, and emoluments of a judge of the supreme court; and one each nominated by unions of employers and workmen, respectively. Councils of conciliations, consisting of a conciliation commissioner appointed by the governor for a term of three years, to have jurisdiction within a designated industrial district, and one to three assessors, appointed by the commissioner for the occasion, on the nomination of the parties applying for a conciliation council, a like number to be appointed on the nomination of the respondents. Boards of investigation, appointed by court of arbitration. The procedure is for a council of conciliation, when requested, to attempt to adjust the controversy. Failing in this, the matter may be referred to the court of arbitration, which shall make a determination. Disputes involving workers on the Government railways or affecting more than one industrial district may be brought before the court in the first instances by application of a union of railway employees in the one case and of any party to the dispute in the other.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Under the industrial conciliation and arbitration amendment of 1908, which applies only to cases where an award or an industrial agreement is in force, strikes and lockouts are prohibited.

Under the labor disputes investigation act of 1913, which applies only to cases where there is not an existing award or industrial agreement, notice must be given to the minister, who must refer matter to an industrial commissioner or committee. If no settlement is effected within 14 days from delivery of notice to the minister the labor department conducts a secret ballot, and then 7 days must elapse before cessation of work.

*Penalties for enforcement of antistrike legislation.*—Employer liable to £500 (\$2,433.25) fine and employee to £10 (\$48.67). In the case of public utilities the penalty to the worker is £25 (\$166.66). For encouraging or instigating a strike or lockout the scale of fines is: Worker, £10 (\$48.67); employer or union, £200 (\$973.30). The wages of workers may be attached for fines. Penalty for striking or locking out before notice is given or before expiration of seven days from the secret ballot, £10 (\$48.67) to a worker and £500 (\$2,433.25) to employer. Wages of worker may be attached.

*Remarks.*—At any time during the progress of a strike 5 per cent of the workers concerned may demand a secret ballot on any question relating to the strike.

## AUSTRIA

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts on public utilities are prohibited.

*Penalties for enforcement of antistrike legislation.*—Union may be dissolved and funds and property seized.

*Remarks.*—Before forming a union the organization must notify the Government authorities and send them a copy of the constitution and by-laws. The authorities may then forbid the formation of the union if they consider it will be dangerous to the State.

*Legal machinery for the adjustment of disputes.*—Trade-unions of employees of public utilities are permitted under Government supervision. posts, and telegraph, through official channels. Employees may present grievances or requests to the minister of railways,

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts prohibited on railroads and in all forms of the public service (railways, postal, telegraph, and telephone service, all of which are under State control).

*Penalties for enforcement of antistrike legislation.*—Imprisonment or fine.

*Remarks.*—There has been no serious strike on Belgian railroads since their establishment. This is due to the fact that positions on the railways are much sought after, because of stability of employment, pensions, and on account of the prestige of being in the Government service.

## CANADA

*Legal machinery for the adjustment of disputes.*—The law is administered by the minister of labor, and is under the immediate direction of the registrar of boards of conciliation and investigation appointed by the governor in council. Boards of conciliation and investigation are appointed by the minister of labor, one member being nominated by each party to the dispute and the third by those two. If nominations are not made in due time, the minister appoints on his own motion. Jurisdiction by the minister is obtained by the request of either party for the appointment of a board of conciliation and investigation.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts are illegal in public utilities and mines until after an investigation by a Government board and the publication of its report.

*Penalties for enforcement of antistrike legislation.*—A fine ranging from \$10 to \$100 may be levied on each worker, and from \$100 to \$1,000 on each employer, for each day an illegal strike or lockout continues; also any person who encourages any employer to declare or continue a lockout, or any employee to go or continue on strike, illegally may be fined from \$50 to \$1,000. Penalties are not imposed by the Government but must be enforced by the injured party to the dispute.

*Remarks.*—The object sought in publishing the report of boards of investigation is to enlist the coercive force of public opinion upon the side of the right as found by the board.

## DENMARK

*Legal machinery for the adjustment of disputes.*—By a law passed in 1910 provision is made for the appointment of a permanent arbitration court of six members, selected from organizations of employers and employees, with a president and vice-president, with qualifications of an ordinary judge. It is the duty of this court to make the parties to a dispute respect any agreement between them. A Government conciliator is appointed for two years. Whenever a strike or lockout is impending (public notice being compulsory), it is his duty to intervene and attempt to effect a settlement.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes or lockouts are prohibited in cases where court awards or trade agreements are broken. In cases where no trade agreements exist a strike is legal, but public notice must be given before it is started.

*Penalties for enforcement of antistrike legislation.*—Fines.

## ENGLAND

*Legal machinery for the adjustment of disputes.*—There is no legal machinery, strictly speaking, for the adjustment of wage disputes on the railways, but effective machinery is in existence which is quasi official, consisting of an agreement between the railroads and their employees, which was originally negotiated by a representative of the board of trade in 1907. It was amended as the result of conferences and the report of a royal commission in 1911. These changes were the outcome of the railway strike in 1911. By this agreement boards are created, with equal representation of railroads and employees, to perform the conciliation work not settled by direct negotiation between the parties. If ■ settlement can not be reached a neutral chairman or umpire, selected

by the conciliation boards from a panel prepared by the board of trade, is called in, and his decision is final.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—No legislation.

*Penalties for enforcement of antistrike legislation.*—No legislation.

*Remarks.*—The adjustment of disputes on other public utilities and in the mining industry is provided for in the conciliation act of 1896. Conciliators or boards of conciliation are appointed by the board of trade. Arbitrators are also appointed on the application of both parties, selected from panels of employers, employees, and "persons of eminence and impartiality" established by the board of trade. For conciliation proceedings the board of trade acts on its own initiative or by the request of either party; for arbitration, on the application of both parties.

## FRANCE

*Conditions under which strikes and lockouts are prohibited or are illegal.*—The only qualification as to complete freedom of action in the railway service is that any engineer, fireman, or trainman shall not desert his post during the progress of a journey. Postal employees and employees in shipping service controlled by the Government are prohibited from striking.

*Penalties for enforcement of antistrike legislation.*—Desertion of trains between terminals is punishable with imprisonment ranging from six months to two years. Postal and other civil employees may be dismissed or suffer losses in pay. The monopoly privilege may be withdrawn from the shipping service on which a strike occurs.

*Remarks.*—In all occupations except those mentioned the right of employers and employees to take concerted action in a peaceful manner with a view to cessation of work has been officially recognized since 1884. On October 2, 1910, the National Federation of Railway Employees of France and the Federation of Unions of Railway Engineers and Firemen called a general strike on all the railroads of the country. The Government, using its full authority under military laws, called for a mobilization of the strikers, and ordered them to do military duty for three weeks. Their military duties were specified as the keeping of the railways under normal working conditions under the orders of their superior officers. This measure defeated the strike, which was called off after six days.

## GERMANY

*Legal machinery for the adjustment of disputes.*—Means for enabling railway workers of all groups to bring their requests and grievances to the notice of the authorities have been instituted by all the State railway administrations in Germany under the name of "workmen's committees."

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes and lockouts are practically prohibited on public utilities. There are no specific laws forbidding strikes, but rules and practices of railway and other public utilities administration make strikes impossible. About 90 per cent. of the organized railway employees belong to unions, the by-laws of which specifically waive all claim to the right to strike.

*Penalties for enforcement of antistrike legislation.*—No specific penalties for engaging in strikes, but workmen are forbidden to belong to unions which assert the right to strike. All union organizations and by-laws are subject to governmental sanction. The coercive force of the law is found in the fact that a railway employee who engaged in a strike would be dismissed or fail of advancement in his work. Every Government employee looks forward to attaining the status of an "official," and this is practically impossible if he belongs to or is known to sympathize with a trade-union which does not meet with Government approval.

## HOLLAND

*Legal machinery for the adjustment of disputes.*—Delegates are selected from different groups of railway employees who are authorized

to present the wishes and complaints of railway workers before the managers. Arbitration boards have been established for the enforcement of penalties imposed because of infractions of working rules and conditions.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes in railway service are prohibited.

*Penalties for enforcement of antistrike legislation.*—Imprisonment or fine.

*Remarks.*—Legislation prohibiting strikes was the outcome of a general strike in the Dutch railway service in 1903.

#### ITALY

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes are prohibited in railway and public service.

*Penalties for enforcement of antistrike legislation.*—Fine and loss of employment.

*Remarks.*—Legislation relative to fines and loss of employment would not practically prevent strikes, because of the impossibility of enforcing the law upon so many individuals. The real restraining influence is the power of the Government to call out the reserves and compel strikers to resume work under military law.

#### OTTOMAN EMPIRE

*Legal machinery for the adjustment of disputes.*—In the case of a dispute relative to wages or working conditions, a conciliation board is organized, composed of six members, three representing employers and three representing employees. The boards are presided over by an official appointed by the Government. The agreements reached by these boards are enforced by the Government. If the parties to the dispute can not agree, the employees are free to stop work, but nothing must be done by them opposed to freedom of action.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes in public utilities are unlawful until grounds of dispute are communicated to the Government and attempts at conciliation have failed.

*Penalties for enforcement of antistrike legislation.*—Imprisonment or fine.

*Remarks.*—The organization of trade-unions in establishments carrying out any public service is forbidden.

#### PORTUGAL

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Illegal in public utilities until 8 to 12 days' notice has been given, together with a statement as to the causes for a strike.

*Penalties for enforcement of antistrike legislation.*—Loss of employment.

*Remarks.*—In all services, except public utilities, strikes have been expressly permitted since the establishment of the Republic in 1910.

#### ROUMANIA

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes are prohibited in public utilities.

*Penalties for enforcement of antistrike legislation.*—Imprisonment and loss of employment.

*Remarks.*—No employee of a public utility can join a trade-union without the authorization of the Government.

#### RUSSIA

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes are prohibited among employees of public utilities.

*Penalties for enforcement of antistrike legislation.*—Imprisonment and loss of employment. Authorities may arrest or banish strikers without bringing them before a court.



## SPAIN

*Conditions under which strikes and lockout: are prohibited or are illegal.*—Strikes are illegal in public utilities until five to eight days' notice is given, together with a statement as to the causes of the strike.

*Penalties for enforcement of antistrike legislation.*—Leaders and officials of labor organizations or concerted movements who do not make a declaration as to the causes for a strike are liable to imprisonment.

*Remarks.*—In industries other than public utilities strikes are expressly allowed provided they are not accompanied by threats or violence.

## SWITZERLAND

*Legal machinery for the adjustment of disputes.*—The Canton of Geneva has established a system of conciliation and arbitration. Conciliators are elected directly by the two parties to the dispute. If they can not reach a settlement, recourse is had to an arbitration board under Government auspices. There is no law for the settlement of disputes in the Federal railway service.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—Strikes are prohibited in the Federal railway service and in the Canton of Geneva whenever an industrial agreement or award is broken.

*Penalties for enforcement of antistrike legislation.*—In the Federal service strikers are punishable by fines and cautions. There are no penalties in the Canton of Geneva.

*Remarks.*—There have been no strikes on the railways of Switzerland since their nationalization in 1897.

## TRANSVAAL

*Legal machinery for the adjustment of disputes.*—The Transvaal law is administered by a department of labor. Boards of investigation are appointed on the request of either party to a dispute. The board has the power of the supreme court as to securing evidence, etc., but can not make binding orders. Failing the adjustment of a dispute by agreement, the board reports to the minister of labor its recommendations, which are officially published and also given to the newspapers.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—In public utilities, the mining industry, and in any other industry to which the provisions of the act are extended by proclamation, strikes are unlawful until after an inquiry by a Government board and until one month after the publication of the board's report.

*Penalties for enforcement of antistrike legislation.*—Any striker is liable to a fine of £10 to £50 (\$48.67 to \$243.33) a day, and, in default of fine, imprisonment, or imprisonment for 3 months without the option of fine. Any one encouraging another to strike may be fined £50 to £250 (\$243.33 to \$1,216.63) or 6 months' imprisonment. Any employer declaring a lockout may be fined £100 to £1,000 (\$486.65 to \$4,866.50) a day, or given 12 months' imprisonment.

*Remarks.*—The Transvaal law is based, as regards prevention and procedure, upon the Canadian Industrial Disputes Investigation Act of 1907.

## UNITED STATES

*Legal machinery for the adjustment of disputes.*—Law providing for conciliation and arbitration of disputes on railways which interrupt or threaten to interrupt the business of the employer to the detriment of the public interest, under the administration of a board of mediation and conciliation appointed by the President. The board attempts mediation and conciliation, which failing, the board seeks to procure the submission, through an agreement of the parties, of the dispute to a board of arbitration. Jurisdiction is obtained at the request of either party to a dispute, or the board may proffer its services.

*Conditions under which strikes and lockouts are prohibited or are illegal.*—No legislation by the Federal Government.

*Penalties for enforcement of antistrike legislation.*—No penalties against strikes.

THE KANSAS INDUSTRIAL COURT BILL<sup>1</sup>

Governor Henry J. Allen of Kansas called a special session of the Legislature on January 5, 1920, to consider a bill for the establishment of an industrial court for the trial and determination of industrial disputes arising in the food, clothing, fuel, transportation, and public utilities industries. The bill was prepared under the direction of the Governor. Amendments introduced by the Legislature give the court a wider range than as originally provided. The labor lobby made vigorous attempts to make the court a mere instrument for voluntary arbitration. The measure became law about January 25th.

The manufacture of food products, the manufacture of "clothing and all manner of wearing apparel in common use by the people," the mining or production of fuel, "the transportation of all food products and articles or substances entering into wearing apparel or fuel," and all public utilities and common carriers as defined by law under the general statutes of Kansas, are declared to be affected with a public interest and therefore subject to supervision by the State "for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people." Any person, firm or corporation engaged in any of these industries affected with the public interest, either as owner, manager or worker, is subject to the provisions of this law.

The bill creates a Court of Industrial Relations to be composed of three judges appointed by the Governor, by and with the consent of the Senate. One judge shall be appointed each year and each judge will serve for three years. The salary of the judges is fixed at \$5,000 a year. This Court will sit at Topeka, the capital of the State, and shall be a Court of record. The Court determines its own procedure, but the rules of evidence as recognized by the Supreme Court of the State of Kansas are binding upon it in the taking of testimony.

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<sup>1</sup> Law and Labor 2:31-3. February, 1920.



The power and duties of the Public Service Commission are transferred to the Court and the commission abolished. "In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries (referred to above) \* \* \* if it shall appear to said Court that said controversy may endanger the continuity or efficiency of service of any of said industries \* \* \* or affect the production or transportation of the necessities of life \* \* \* or produce industrial strife, disorder or waste or endanger the orderly operation of such industries \* \* \* full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations upon its own initiative, to summon all necessary parties before it and to investigate said controversy \* \* \* and to investigate conditions surrounding the workers and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries \* \* \* and to settle and adjust all such controversies \* \* \*." It is further made the duty of the Court to investigate and determine controversies upon the complaint of either party to a controversy, upon the complaint "of any ten citizen taxpayers of the community in which such industries \* \* \* are located, or upon the complaint of the attorney general of the state." Upon the conclusion of the investigation and "as expeditiously as possible" the Court shall serve upon "all interested parties its findings, stating specifically the terms and conditions upon which said industry \* \* \* should be thereafter conducted insofar as the matters determined by said Court are concerned." The Court "shall order such changes, if any, as are necessary to be made in and about the conduct of said industry \* \* \* in the matter of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage or standard of wages, \* \* \* provided, all such terms, conditions and wages shall be just and reasonable and such as to enable such industries \* \* \* to produce or transport their products or continue their operations and thus to promote the general welfare." The terms ordered by the Court "shall continue for such reasonable time as may be fixed

by said Court, or until changed by agreement of the parties with the approval of the Court"; but a party complying in good faith with the terms of the order for sixty days or more and finding the order "unjust, unreasonable or impracticable" may apply to the Court for a modification.

Section 9 provides: "It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. \* \* \*

The bill gives the Court ample power to compel the attendance of witnesses and the production of books. However, in the event that any party to a controversy fails to obey an order of the Court, the Court is "authorized to bring proper proceedings in the supreme court of the State of Kansas to compel compliance" and should either party to a controversy "feel aggrieved" at any order made and entered by the Court, the party is "authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the supreme court of the State of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises." In such a proceeding in the supreme court, the evidence in the case before the Court of Industrial Relations may be considered by the supreme court but either party may introduce such other evidence as the supreme court may deem necessary to enable it to render a just and proper judgment. Such a proceeding will be given precedence over other civil cases. Any action brought to set aside a decision of the Court of Industrial Relations must be brought within thirty days from the time the decision is rendered.

Any union or association of workers which may incorporate under the laws of the state, shall be recognized as a legal entity, and the right of such corporations to bargain collectively for their members is recognized. However, the in-

dividual members of unincorporated associations, desiring to bargain collectively, may appoint in writing an officer or officers to represent them in making collective bargains, and the written appointment of such officers shall be made a permanent record of the union.

It is made unlawful to discharge or discriminate against any employee because he testifies as a witness before the Court or signs any complaint or does any other thing to bring the attention of the Court to any controversy, or to combine or conspire to boycott, picket, advertise or carry on propaganda against any person, firm or corporation because of any action taken under the direction of the Court or because the jurisdiction of the Court has been invoked.

It is made unlawful to cease operations for the purpose of limiting production and transportation, to effect prices or to avoid the provisions of this law, but any concern may apply to the Court for authority to cease operation and if the application "shall be found in good faith and meritorious," then the application shall be granted by the Court. It is made unlawful, individually or in combination, to do any act with intent "to hinder, delay, limit or suspend the operation of any of the industries \* \* \* or to delay, limit or suspend the production or transportation of the products of such industries \* \* \*." However it is not unlawful for an individual to quit his employment at any time.

Violation of the act is a misdemeanor punishable by a fine not exceeding \$1,000 or imprisonment not exceeding one year or both. But any officer of any corporation engaged in any of these industries or an official of any labor union employed in these industries who shall wilfully violate any of the provisions of this act shall be deemed guilty of a felony and punishable by a fine not to exceed \$5,000 or imprisonment in the penitentiary at hard labor for not more than two years or both.

In case of the suspension or cessation of operation of any of these industries contrary to the provisions of the law, if in the opinion of the Court it will seriously effect the public welfare the Court is "directed to take proper proceedings in any Court of competent jurisdiction \* \* \* to take over control, direct, and operate said industry \* \* \* provided,

that a fair return shall be paid to the owners of such industry \* \* \* and also a fair wage to the workers engaged therein during the time of such operations \* \* \*."

An industrial controversy in any industry not specifically designated by this law may be, by mutual consent in writing of the parties thereto, submitted to the Court, and its decision shall have the same effect as decisions in cases in industries specifically covered by the law.

The findings of the Court as to minimum or standard of wages "shall be deemed *prima facie* reasonable and just" and such minimum or standard, shall take effect as of the time when the investigation of the Court leading to that finding began. Either party having a balance due from the other as a result of such finding may sue therefor.

The justices of this Court are "authorized and empowered to make or cause to be made within the state or elsewhere such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems." The Court is directed to make an annual report covering all of its expense and proceedings.

## THE COLORADO INDUSTRIAL COMMISSION <sup>1</sup>

The nearest approach to the Kansas statute is an act of the State of Colorado, enacted in 1915, creating an industrial commission, and conferring upon it certain powers as to the adjustment of industrial disputes. This act is patterned to some extent after the Canadian Industrial Disputes Acts, and makes it unlawful for employers to declare or cause a lockout, or for employees to go on a strike prior to or during an investigation or arbitration of a dispute. This act received its first test in this regard during the coal strike of November last, a restraining order against the proposed strike of November 21 being issued under it by the District Court of the City and County of Denver. In obedience thereto the district officers of the miner's union recalled their strike order, resulting, it is claimed, in a production of coal more nearly normal than in any other State of that section of the country. However, the union attacked the law on the ground of its claimed unconstitu-

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<sup>1</sup> Monthly Labor Review. 10:810-1. March, 1920.

tionality, and some technical questions as to its enactment. The act limits its application, at least in the case of lockouts, to industries "affected with a public interest." In its later deliberations the district court, without suggestion from either party, injected the test of public interest into the case in hand, and ruled that underground mines are not affected with a public interest and fall outside the act. The case has been carried to the Supreme Court on a writ of error for a decision on this subject, as well as on the constitutional questions, and it will be of interest to know what conclusion shall be reached by the Court on these points. However, it seems obvious enough that coal mines are affected with a public interest, so that the main concern is with the validity of the act that undertakes to prevent the cessation of industrial operations on grounds of the public concern until suitable time for investigation has elapsed.

Though this first legal process for enforcement has thus been opposed, the commission reports results of great value flowing from the operations of the law.<sup>2</sup> Since its enactment in 1915, "this state has been comparatively free from labor trouble, and has been absolutely free from any protracted strike; and bloodshed, violence, and the destruction of property have been unknown."

The law requires 30 days' notice before a strike or lockout is actually engaged in; and this provision, "against which violent criticism has been directed, has saved the situation innumerable times." This period permits opportunity for conciliatory efforts, which have many times been successful. If this fails, informal conferences often afford a means of arriving at an understanding; while in other cases, formal hearings and awards are resorted to. From March, 1917, when the present commission took office, up to November 1, 1918, the commission handled controversies involving 1,430 employers and 28,888 employees. There were 196 cases reported to the commission, of which 145 were reported with the statutory 30 days' notice; 32 resulted in strikes of from 1 to 65 days' duration, but all were settled, men returning to work. The record is believed to show "ample justification for the enactment and continued existence of the law," which all interests "are coming to view as ■ step in the right direction."

<sup>2</sup> Second Report of the Industrial Commission of Colorado, 1917-18, p. 98-121.



THE AUSTRALIAN SYSTEM OF DEALING  
WITH LABOR DISPUTES <sup>1</sup>

The Australian system of dealing with labor disputes and of the regulation of labor conditions has passed through many changes. Different states, each with full power of self-government, have from time to time altered and amended their laws according to experience. In New Zealand, for instance, the Industry Disputes Act has been amended in some way on an average of once every two years since the year 1900. In New South Wales, existing legislation has on three occasions been practically repealed, and entirely new laws have been passed. But in all the states there is a striking uniformity of essentials. The whole industrial system is based on the principle that the relationship of employer and employe is a matter of grave social concern that justifies interference by some centralized authorities. In other words, freedom of contract is not now unlimited but can only operate within certain areas prescribed by law. The desire of parliaments has always been to make this interference between employer and workman as small as possible, and the result has been that practically all industries work today only above minima which are from time to time prescribed, and during certain hours that are fixed by law.

To understand the Australian system it is necessary to realize that the country generally has accepted three definite industrial claims as now beyond dispute. We start off in the new era of reconstruction with concessions finally guaranteed that are the subject of controversy in other countries. These three fundamentals, as I might call them, are as follows:

1. The recognition of the fullest right of workmen to organize for their own protection, and the right of each union to make the collective bargain for the industry that it represents.
2. The recognition of the eight-hour day.
3. The recognition of the principle of the living wage in all industries—that is, the drawing of a line below which competition in the labor market is illegal, but above which ordinary economic forces come into play.

These three concessions have been the result of our system of industrial arbitration. This system has been arrived at by two different methods which have gradually converged. Two states adopted what is known as the wages board system, all

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<sup>1</sup> George Beeby, Minister of Labor for New South Wales, in *Survey*. 42:399-401. June 7, 1919.



the others, what can more accurately be described as judicial arbitration.

The wages board system contained the minimum element of compulsion. Under it the government of the day had power, within certain limits, to appoint a wages board for an industry. This board generally consisted of about six workmen and six employers who selected their own chairman, with provision that the government could provide a chairman in the event of failure of mutual selection. These boards were authorized to declare a minimum standard for the industry on hours, minimum wages and the conditions attached to juvenile labor. They originally applied only to certain industries in which women and children were largely employed, such as garment making, manufacture of confectionery and similar occupations; but they were gradually extended, and in the states which had adopted this system all manufacturing industries gradually came under regulation. The finding of the board became a common rule for the industry, and any employer working below the standard fixed was liable to cash penalties. That system, however, did not in any way interfere with the rights of the workmen to take part in a strike or in any other legal way to force a better bargain for his trade.

One of these states which originally adopted wages boards abandoned the scheme and now works under the system of judicial arbitration. The wages board system today operates only in one state, Victoria, and its awards generally conform to the standards fixed by the arbitration courts. The judicial system was adopted originally in New Zealand and ultimately, with variations, by the states of New South Wales, South Australia, Queensland and Western Australia. It leads to the ultimate settlement of all industrial disputes by a court especially appointed, generally consisting of a single judge. In some cases the judge sits with assessors representing the two interests, but in nine cases out of ten the ultimate decision rests with the judge. These judges operating in these states and in the federal area conduct proceedings much on the same lines as those of a civil court. The parties become litigants, they file claims and replies, issues are joined, advocates are engaged, and elaborate inquiries in open court are held, evidence being called in support of cases, in the reply, in rejoinder, in rebuttal; and in every way the paraphernalia of a court is maintained.

Ultimately the decision is left to the judge whose award, when made, becomes the standard for the industry.

Today there is a strong movement for a complete change of this system. It is frankly admitted by both sides that its effect has been to keep workmen and employers apart, that a vast amount of work done by the courts could be done by voluntary conciliation and equally satisfactory results reached. The movement in Australia today is towards investigation of industrial troubles by negotiation rather than by litigation.

New Zealand has already altered its law and makes it difficult for the arbitration court to deal with the case. Before it can get to the court it must be dealt with by a special body appointed for a district or appointed for each individual dispute. In every way the parties are urged and encouraged to arrive at their own agreements, but in the background the court exists to deal with the cases of violent controversy, particularly in industries of a national character.

In New South Wales a recent law provides for the appointment of a board of trade. This board of trade consisting of representatives of employers and workmen in equal numbers, with a judge of the industrial court acting as president, is entrusted with the following, among its other duties:

1. The fixing from year to year of the basic living wage applicable to all adult male and female labor. (This function does not in any way prevent arbitration courts from fixing minima for particular industries. It only restricts them from going below the basic living wage.)
2. The appointment of industrial councils for industries.
3. The appointment of shop committees for individual workshops.
4. The general encouragement of a system of industrial organization on the lines of the Whitley scheme.
5. The holding of inquiries on important industrial matters of universal interest, and the recommendation to Parliament from time to time of legislation.
6. The absolute control of the conditions under which juvenile labor can be employed.

The idea of this act is gradually to transfer the whole system of industrial regulation from judges and industrial courts to these industrial councils and shop committees.

Power is also given to the government to utilize the industrial councils in any future provision which may be made for unemployment insurance. There is strong opposition to maintenance of any highly centralized fund dealing with insurance against employment and equalization of wage pay. It is thought that great problem will be more effectively dealt with if power is given to the government to subsidize any fund which may

be raised in any industrial council for the purpose of unemployment insurance.

It must be remembered that a real effort is being made throughout the commonwealth today to move by stages from the old system of industrial arbitration to a system based somewhat on the Whitley scheme. The legislation is so framed as to give the minister of the day ample power to encourage in every way this program of bringing employers and workmen into close touch; but the idea of maintaining some tribunal which in the end can fix minimum standards for an industry in the event of the failure of negotiations, is maintained. With all its faults, the general opinion among employers is that in these days of perpetual industrial unrest it is essential to have some tribunal before which parties in violent dispute can be called, and to force them to adjust their differences. Workmen today are not favorable to compulsory arbitration. They believe that they could have achieved bigger results by the free use of the strike weapon and claim that restrictions on the right to strike have held them back. There is some basis for this objection from their point of view. Arbitration has largely improved the standards of unskilled labor and of those classes of workmen who in the past have found it difficult to organize. The lower grades of labor clearly have received very definite benefits from the system, but the skilled mechanic, with the perpetual restriction placed on his right to strike, has not improved his standards in the same proportion. That is to say, the relative difference between skilled and unskilled labor is not as great today as it was before the systems were adopted.

These limitations on the power to strike have not in any way saved us from serious dislocations. Workmen strike freely in Australia, in spite of the law, and no law can check them. But constant public investigation of industrial disputes has had a very restrictive effect. It has prevented and has shortened many strikes. All proceedings in the past have been in open court, and the public has become rather intimately acquainted with the nature of industrial relations. Workmen, except those who are revolutionary in tendency, are often engaged in analyzing the important question whether an industry can stand some increase which is proposed and, generally, the whole system has been of great educational value. Its main weakness, however, has been that it has prevented negotiation and has kept employ-

ers and workmen in two definite, hostile camps, always ready to litigate but rarely in the mood for conciliation.

It must be remembered that the national parliament, Congress as you call it, has some power over industrial matters. The federal constitution provides that parliament can legislate for the prevention and settlement of industrial disputes extending beyond the limits of any one state. In pursuance of this power, the federal court of arbitration has been set up, and any dispute which gets beyond the boundary of one state can be, and often is, determined by this federal court. The court, however, is constituted very much on the same lines as those of different states and generally adopts the same principles in many awards. The tendency is for unions, if possible, to make their disputes go beyond the state boundary. They prefer the federal tribunal to that of the states. But in this court the learned judge who is today its president has not gone to any material extent above the standards generally recognized by these state tribunals. He has laid down one general guiding principle, and the duty of his court is not to regulate the detailed workings of an industry but merely to provide for the fixing of a reasonable standard of living in the industry, leaving the complete management of the business in the hands of the employer and his representatives.

There has been much comment by employers from time to time on different awards. There has been considerable opposition to the whole system, but this has gradually disappeared. Very few employers today ask for a complete repeal of our industrial legislation. They welcome public investigation of claims made, and they agree that in a young country which is building up its manufacturing industries it is better that all employers should be put upon the same footing. No employer in Australia can now obtain an advantage by the use of cheap labor. It is true also, as the employers state, that the fixing of the minimum wage for the industry has tended to inefficiency, but employers are not without blame in this, when wages fixed have been only minima. Most employers at the outset, directly a wage was fixed, petulantly announced that all their employes in the future would get the same wage and abolished the variations which previously existed. The result of this general application of the minimum as a standard wage undoubtedly led expert workmen to come down to somewhere near the level of the average man. During recent years, however, many employ-

ers have accepted the awards of the court only as minima and have higher wages in order to get higher results.

There is also a very strong movement today to try to introduce systems of payment on piece-work and payment by results, but this is bitterly resisted by unionism. It is thought that the industrial councils will probably be able to bring about some change in this direction. In the shipbuilding industry, recently commenced, the New South Wales government has succeeded in getting mechanics, particularly those engaged in riveting, to work on a piece-work basis, with proper guarantees that increased output will not lead to reduction of piece-work rates, and also with the provision that workmen shall not injure themselves by going beyond the ordinary eight-hour day's work, except in cases of emergency. The result of this change was that the output of riveters per man was on an average doubled within a few weeks, and it is anticipated that even better results can be obtained without injury to workmen.

I discussed the whole of this question with the Associated chambers of manufacturers of Australia some weeks ago, and the gathering unanimously agreed to the following propositions:

1. That a minimum standard of comfort prescribed by law was not injurious to them, so long as the detailed management of the business was left entirely to their own judgment.
2. That the eight-hour law, particularly in all industries in which men worked under cover, or in connection with machinery, should be universally established.
3. That the time had arrived for a joint responsibility of the government, the employer, and the workman, to provide effective means of insurance against unemployment, sickness and accident.
4. That as a last resort it was best, in the interests of the state, to maintain some authoritative system of settlement of industrial disputes in all important industries.
5. That standardized conditions for the whole commonwealth, as to the condition of employment of juvenile labor, were advisable.

I venture to summarize the situation as follows: Australia will continue to maintain the three fundamentals mentioned in the beginning of this statement.

It will continue to maintain some tribunals which will have power as a court of ultimate resort to make an award in settlement of industrial disputes which will be binding on the parties. But these tribunals will probably consist more of industrial councils, and access to them will be more difficult. There will also be created industrial councils for industries and shop committees for individual establishments. And all parties will be compelled to negotiate in these councils on all matters affecting industries before they will get access to a compulsory tribunal.



A definite movement will before long be made in the direction of unemployment insurance, but will, I think, be on the lines already indicated; that is, the industrial council will become responsible for the creation and maintenance of the fund for its particular industry—this fund being liberally subsidized from the public purse. Industrial records of individual workmen will be kept, and gradually those who are unworthy will be scheduled and not allowed to participate in any insurance fund.

The general control of the whole scheme of industrial regulation will, I think, beyond doubt before very long be centralized in the national government. There is a strong movement today which is rapidly reaching a climax to vest this important function in a national authority on the understanding that it uses the state machinery now in existence. Some uniformity is essential. There is considerable conflict today between different state systems and the federal system, and both employers and workmen are in agreement that it would be better to take the industrial power from the hands of state parliaments and invest it in Congress.



PART III  
COMPULSORY ARBITRATION OF  
INDUSTRIAL DISPUTES



## AFFIRMATIVE DISCUSSION

### COMPULSORY ARBITRATION<sup>1</sup>

Strikes are a serious injury to the public, cause enormous losses to employers and employees, and often accomplish nothing for the strikers beyond blacklisting and the loss of opportunity to earn a living. What is the remedy? Cooperation will abolish strikes, because employers, as a separate class antagonistic to labor, will disappear and the workers will become their own employers. But cooperation does not promise any immediate relief; it is growing very slowly, and cannot be relied on as a present solution. Aside from cooperation, the equitable methods of avoiding strikes are two: voluntary settlement by conciliation or mediation; and compulsory settlement in courts having jurisdiction of industrial questions under statutory regulations of labor and capital, or under the general principles of justice and equity.

Since voluntary methods do not accomplish the work, and there is no immediate prospect of their doing so, it is clear that at present and probably for this generation the question is simply, strikes or labor courts. Let us examine the leading arguments that may be advanced on each side of the question.

I. Where mediation and conciliation fail, compulsory arbitration is demanded in the interests of peace,—industrial, political, and social peace. Violence and destruction are frequent accompaniments of strikes. Here are a few of the facts:

Massachusetts railroad strike, 1834; riots, militia called out to suppress the disturbance.

Philadelphia weavers, 1842; very disorderly.

Philadelphia brickmakers, 1843; much rioting and destruction of property.

Great railroad strike, 1877; rioting and burning, troops overpowered by mobs, twelve men killed at Baltimore and many more at Pittsburg, millions of property destroyed.

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<sup>1</sup> By Frank Parsons. *Arena*. 17: 663. March, 1897.

Gould railroad strike, 1886; violence and destruction.

New York street-car strike, 1889; riotous conduct, one striker shot.

Buffalo strike, 1892; riots, troops, bloodshed, entire State militia called out.

Homestead strike, 1892, riots, Pinkerton's battle, many lives lost; much property destroyed, forty non-union men poisoned at their meals.

Coal Creek Valley miners, strike, Tennessee, 1892; fighting and burning, State troops called out.

Silk workers' strike, Paterson, N. J., 1894; rioting and mob violence.

Great coal miners' strike in eleven states and one territory, 1894; whole counties terrorized, strikers intrenched in open insurrection, much property destroyed, troops powerless to preserve order, shooting, eviction, dynamite assassination, kidnapping, torture, pitched battles, many lives lost.

Chicago strike, 1894; mobs, riots, troops, loss of life and property.

Brooklyn street-car strike, 1895; rioting and destruction.

Philadelphia street-car strike, 1895; some disturbance and destruction.

One of the objects of the federal Constitution is to "insure domestic tranquillity." Surely that object cannot be considered accomplished until law is substituted for force in the settlement of labor troubles. Even when rioting does not occur, the danger of violence that is incident to every great industrial dispute is in itself a mighty influence for evil. If the parties will not voluntarily adopt a method of settlement that does not threaten the public peace, they must be compelled to adopt it. The public good is the supreme law.

2. Justice demands that law be substituted for force as a means of deciding labor troubles, not merely for the sake of peace and safety, protection of life and property, and securing the business of the community from interruption or hindrance, but also for the sake of fairer and more reasonable settlements between the parties and the infusion of equity into all the relations of labor and capital.

Very often the claims of workmen who strike are wholly just, and few cases can be found in which their claims were not just in part at the least. Almost always there is a real griev-

ance that ought to be redressed, yet in the majority of cases the strikers are defeated, and fail to obtain relief; not uncommonly indeed they are severely punished for venturing to ask for justice, all who were known to have been active in the strike being discharged and blacklisted, and the rest being less favorably treated than before the strike, to teach them to be quiet in the future, and very likely discharged on the slightest pretext and replaced by non-union men.

The Pullman affair is a good illustration of the failure of strikes to secure justice for the workers. The demands of the men were for the most part fair and reasonable; public sympathy was with them; their cause was backed by a tremendous sympathetic strike on the railways; yet the struggle brought them no redress, nothing but loss.

At the time of the Philadelphia street-car strike in 1895, the men were working twelve to fourteen hours a day for \$2, were unprotected from the weather, and were refused recognition as an organization. They struck for a ten-hour day, vestibules, and recognition. Public sympathy was all on their side. Every paper in the city espoused their cause, except one, which was controlled by traction interests. Immense meetings of citizens were held, and committees of prominent men were appointed to intercede with the companies. Yet the strike entirely failed to secure the workers anything but loss, discharge, and blacklisting.

The recent strike of conductors and motormen in Boston is another illustration of the ineffectiveness of strikes. The men were being worked over ten hours a day in violation of law, they were subject to arbitrary discharge at the whim of any petty boss, and in case of accident were laid off one, three, sometimes seven or eight days during the investigation of the matter, and were obliged to lose this time whether they proved faultless in respect to the accident or not. The demand of the men for better treatment in these respects was eminently just, and the public approved their cause, but they failed to obtain relief. The strike was not well managed, but, judging by experience in Philadelphia and in other cities, it is very improbable that the men would have secured their rights even if they had conducted the battle with all possible skill.

The terrible Coal Creek Valley strike was a revolt against the employment of convict labor in the mines. The strikers were conquered by the troops and gained no recognition of the

very just demand that the practice of farming out prisoners to corporations should cease. The strike did something however toward bringing the Tennessee system into disrepute.

One of the demands of the telegraphers' strike of 1883 was that women should receive the same pay as men for the same work. Another was for the abolition of Sunday work without extra pay; and another for an eight-hour day. The strike failed, and these just demands were not complied with.

The record of strikes by no means covers the field of injustice to labor; in innumerable cases the workers suffer in silence, knowing the costliness and futility of strikes. In many of these cases redress might very likely be obtained if a peaceful appeal to a court of justice were permitted.

Let sixty per cent of the workers affected by any grievance have the right to bring the matter into court on showing that reasonable effort in the direction of conciliation and voluntary arbitration has been made and has failed to afford redress. If either employers or employed do not desire to leave the decision with the court, let the workers choose one arbitrator, the employees another, and these two a third, subject to the approval of court, (which represents the interests of the community); let the award of this board of arbitrators stand on the same footing as a judgment of the court and be enforced in the same way. Do this and make strikes unlawful, and you have gone a great way toward substituting reason for might in deciding the rights of labor and capital.

Not only the workers and the general public would be benefited, but there would be a corresponding gain to capital, which is also a heavy loser by strikes, and does at times submit to imposition and grant unjust demands rather than risk the consequence of a rupture. This is especially apt to be so where employees take advantage of the fact that their employers are under contract with third persons to perform a given service in a specified time.

In whatever way it is regarded, judgment by court is a better means of arriving at justice and equity than judgment by wager of battle. In respect to justice the decision of an impartial tribunal will have the same superiority over private settlement by conflict in the case of disputes between corporations and their employees as in case of disputes between



man and man, or state and state. Heat and passion, greed and strength, are not the champions of equity. The prize ring does not concern itself with right. The battlefield is not the place to look for justice.

The federal Constitution reflects the thought and experience of the civilized world in the statement that the first object of government is "to establish justice." Surely governments instituted to establish justice should endeavor to prevent the continuance of anything so inimical to justice as the strike. And if society takes from labor what is often to-day its sole defense against capitalistic aggression,—if society forbids the strike, as indeed it does already through the injunction of its Federal courts whenever the combat threatens to hinder the mails or interfere with interstate commerce,—then it is surely the duty of society to give to labor another means of defense as good or better than the one that it has taken away; and the only method of doing this at the present stage of social development is to establish industrial arbitration, with the power of the law behind it to enforce whatever decisions may be rendered.

3. Economy demands the arbitrament of law in place of the arbitrament of conflict. In the railway strike of 1877 the loss to property and business inflicted by the mob at Pittsburg alone is estimated at \$5,000,000, and the county of Allegheny was compelled to pay \$2,787,000 of the loss sustained during the Pittsburg riots. The Chicago strike cost the railways \$5,358,000, and the employees \$1,700,000, a total of \$7,058,000, not including the loss to the Pullman Company. The National Commission says that "beyond these amounts very great losses, widely distributed, were incidentally suffered throughout the country." The California fruit-growers, for example, lost \$50,000 a day. The total loss which resulted from that one strike, in all probability exceeded \$10,000,000. The telegraph strike of 1883 cost the companies \$909,000, and the men \$250,000. The railway strike on the "Gould system" in 1886 cost the strikers \$900,000, those thrown out of employment by their action \$500,000, and the railroads, \$3,180,000.

For the strikes that occurred from 1881 to 1886, inclusive, the wage loss by the employees is estimated by the United States Commissioner of Labor at \$51,814,000, and the em-

ployers' losses are estimated by the same authority at \$30,701,000. And the trouble is not growing less as the years go by. From 1741 to 1880, inclusive, there were 1,491 strikes and lockouts, while for the six years ending December 31, 1886, the number of strikes alone was 3,902,—forty a year for the first period, and over six hundred and fifty a year for the second. Making all due allowance for fuller reporting of strikes in the later period, the contrast is still a startling one.

Surely it is cheaper as well as more just to settle by court than by strike. At present we pay for the strike first; then we pay for a commission to examine into its causes and results; let us have the inquiry first and save the expense of the strike.

4. Manhood also demands arbitration instead of war. Conflict debases both the victor and the victim. Every time deliberation is substituted for passion and force, a gain for character-development is made.

5. It will modify and limit the despotic powers, of unscrupulous corporations, and so tend to prevent oppression, ameliorate the condition of labor, and secure a better diffusion of wealth.

6. It will tend to secure the stability of our republic and the perpetuity of free institutions, by effecting greater harmony in the relations of employers and employed, and eliminating some of the injustices, antagonisms, and conflicts that cause the development of dangerous animosities between labor and capital, and feed the growth of anarchy.

7. The argument from history and the trend of civilization. The tendency of advancing civilization is all in the direction of substituting the compulsion of courts of justice for other private compulsion of individuals or groups of individuals. In primitive times the settlement of disputes of every sort was a private matter. If one man wronged another, or a disagreement arose as to rights, the parties fought out the difficulty alone, or with such help as their friends might grant. Men early found that this method did not insure justice and was inimical to the public peace, so they established courts of justice, with power to compel the arbitration of disputes, in order that their decisions might be

by cool, impartial intelligence, instead of by heat and passion, strength and cunning.

We compel the arbitration of disputes between man and man, between States, between individuals and States, and we are about to establish a court of arbitration for the settlement of disputes between nation and nation, but disputes between a corporation and its employees are left to the primitive method of barbaric conflict.

Under the treaty between the United States and Great Britain, we are trying to do away with war between nation and nation by creating an International Court of Arbitration. When the chief nations of the world come into the movement, send their representatives, and stand behind its decrees, we shall have compulsory arbitration of national difficulties by means of judicial decision in a court of recognized authority, instead of compulsory arbitration by war. That is an object worthy the earnest efforts of the highest statesmanship; but is it not equally incumbent upon our statesmen to make an effort to abolish civil war between great corporations and their employees by establishing courts to arbitrate their differences?

Common sense demands the application to industrial disputes of the same principles that are applied to other disputes. If A and B get to fighting in the street they are brought before a court of justice and informed that they have subjected themselves to the penalties of the law; that as long as they remain in civilized society they will not be allowed to settle their difficulties by battle; that courts are established on purpose to do justice between them; and that if they cannot agree they may appeal to the courts, but must not resort to combat. Why should a corporation and its employes be permitted to fight out their quarrels in the streets to the disturbance of the peace, the interference with business, the destruction of life and property, and the annihilation of justice? Every reason that applies in the former case for putting decision by court in the place of decision by force, applies in the latter with redoubled force.

If A and B cannot be left to fight out their quarrels, nor Massachusetts and Rhode Island, Pennsylvania and New York, Turkey and Armenia, Great Britain and the United States,—if individuals and states and nations must submit

to compulsory arbitration for the sake of peace and justice and liberty, why should a corporation and its employees be permitted to settle their quarrels by war in the heart of a giant city?

The substitution of peaceful, impartial, and intelligent justice for the turmoil, injustice and destructiveness of private conflict is one of the distinguishing marks of a high civilization. It is time we extended the idea of the impartial administration of justice to the sphere of industrial difficulties. Compulsory arbitration of labor disputes means simply the extension of the control of law and order over a field which, up to the present time, has been left to chaos.

8. Experience in France, Belgium and New Zealand shows that compulsory arbitration of labor difficulties is a marked success in practice, a success that need not be afraid of comparison with the results of administering justice by tribunal in other relations of life usually subjected to judicial regulation in civilized communities.

In France and Belgium compulsory arbitration has been for years an assured and successful fact; and in 1894 a strong compulsory arbitration law was adopted in New Zealand, the most progressive, in many respects, of all the British colonies. In England the laws of 1824 and 1837 provided for compulsory arbitration in certain cases, but the laws were not comprehensive enough to be really useful.

The most famous examples of tribunals established by law for the compulsory arbitration of labor troubles are the French "Conseils des Prud'hommes." The parties may submit their differences to arbitration voluntarily. If they do not, then, after an attempt to reach an agreement has failed, the tribunal compels arbitration, and the award is enforced the same as the judgment of any other court of law.

Each council consists of eight members or more, elected for three years—half elected by the workmen in its jurisdiction, and half by the employers. Every question is within the compulsory jurisdiction except future rates of wages, which are only within the voluntary jurisdiction. As we shall see later, there is no valid reason why the compulsory jurisdiction may not be extended to the wage-rate; but even without it, there is a vast work left for compulsory arbitration to do. In France 88 per cent of the cases failing of con-

ciliation are dealt with on the compulsory side of the court. In this country more than 57 per cent of the strikes involve questions that would be subject to the compulsory jurisdiction of a court like the French Council, that is, 57 per cent of our strikes involve other questions than the wage-rate.

The French Labor Report for 1893 says that the "conseils" have an average of 41,000 cases a year. In 1893, 8,982 cases were settled and withdrawn before decision; 16,231 were conciliated; and 11,948 were dealt with under compulsory jurisdiction. The report also says that these courts are characterized by speedy adjudication and a very inexpensive procedure. The total cost, even in extreme cases, where distraining is necessary cannot exceed \$8.72. The following extract from the French report just mentioned is specially worthy of note:

The people are certainly right in attributing to the councils of experts the relative tranquility which industry in France has enjoyed in the present century. They have prevented many strikes by assuring to workpeople a competent adjudication, speedy, and inexpensive.

9. Authority of the highest character favors compulsory arbitration. For example, Francis A. Walker speaks of strikes as "the insurrection of labor." and in his "Political Economy" says: "It is a shame for us as a people that we have not yet made for ourselves a better way out of industrial disputes." The National Farmers' Congress and the New York Society for Political Education favor the movement, and labor organizations as a rule heartily endorse it. The London Chamber of Arbitration, a board of mediation, has recently recommended, as the result of its study and experience, that a compulsory jurisdiction be added to the conciliatory jurisdiction.

A number of objections more or less serious may be raised against compulsory arbitration.

1. In the first place, it may be urged that it is an infringement of liberty.

This, of course, is not conclusive, for every law on the statute book is an infringement of somebody's liberty. Compulsory education is an infringement of liberty. Legislative acts fixing rates to be charged by railways, grain elevators, water companies, telephone companies, etc., constitute infringements of liberty, yet all these things are justified by reason and experience. The same statement is true of laws



prescribing the height and the materials of buildings, laws against carrying arms, prohibiting nuisances, all sorts of regulations to secure the public health and safety. The question is not whether a measure is an infringement of liberty, but whether it is a justifiable infringement. The liberty of the individual must yield to the public good; liberty to do wrong must be curtailed in order that there may be more liberty to do right. Liberty to buy labor in competitive market, at a price and on conditions that would not be accepted but for the duress of necessity, is a liberty to buy manhood as a commodity, and is a liberty to which no one in America has a right since the proclamation of emancipation. Such a liberty is inimical to the elevation of labor and the best development of our citizenship; it is a liberty to buy slaves by the day under compulsion of their necessities, which is near akin to the liberty to buy slaves for life under compulsion of other external circumstances, a liberty that was shot to death in the great war.

The liberty of the employer to oppress the employee is diminished in order that the liberty of the employee to secure justice and work under fair conditions may be increased. The latter liberty cannot be increased without diminishing the former liberty, and the latter liberty is the more worthy. It is a question of the diffusion of liberty. Shall the employer have more than his share, all that his power and advantage can secure? That is a principle which would justify murder and arson, and the abolition of all laws against crime or tortious conduct. Or shall the liberties of the case be equitably distributed, and subject to judicial determination, so that each party may have his fair share, and no more? That is the principle on which is based the law and equity of the civilized world, and it is a principle that justifies the compulsory arbitration of labor disputes.

Strikes involve a far greater interference with freedom than the proposed substitute. Strikes infringe the liberties of employers, employees, and the public; and the infringement is guided by force and passion instead of reason, wherefore it is much more apt to be an unjust infringement than compulsory arbitration is likely to be. The infringement of liberty by compulsory arbitration is less in quantity than in the case of strikes, and infinitely superior in quality,



being a curtailment merely of freedom which is bad, and to which no one has a right,—freedom to be unjust, freedom to conquer a weak adversary, freedom to endanger the public peace and safety.

The objection to compulsory arbitration on the ground that it infringes liberty is largely due to the name. If we called the ordinary administration of justice, "compulsory arbitration of contracts, damages, and obligations in general," it would sound just as antagonistic to liberty. If we belonged to a colony about to establish courts of justice in place of the private settlement of disputes between man and man, we should be met by the same objection, that it would curtail our liberty,—the liberty of the strong to oppress the weak. If we call this measure for the compulsory arbitration of labor difficulties by its true name,—the administration of justice in labor disputes,—we remove at once the chief foundation of this objection.

How completely the objections to compulsory arbitration arise from an indiscriminate dislike of any new measure, that bears its compelling character in its title, may be seen in the fact that no one questions the advantages of arbitration; it is only about compulsion that we differ. If the parties to a dispute will voluntarily submit their difference to arbitration, and live up to the award, everyone agrees that this is the best possible method of dealing with the difficulty. But when the parties refuse to do this, as is usually the case, and insist on settling their disagreements by means of strikes, boycotts, and other sorts of industrial combat, which frequently involve enormous cost, obstruction of business, suspension of industry, disturbance of the peace, destruction of life and property, serious injustice to workingmen, widespread discontent, sullen return to labor under conditions and contracts forced upon them by want, and the antagonisms and debasements of character that come from conflict,—then the question arises whether it is not best to require the parties to submit their differences to an impartial tribunal, instead of fighting them out on the street; whether, when conciliation fails, it is not better that the difficulty should be settled according to principles of equity, by compulsion acting through a court of justice upon both parties equally, rather than according to principles of greed and passion, and

by compulsion of one party by the other. Where conciliation fails, compulsion of one kind or the other must decide the contest. We have to choose between compulsion of the weaker party by the stronger, and a compulsion found to be in the wrong, after a careful hearing and impartial deliberation by a disinterested tribunal. We believe the latter best for reasons already given.

2. But we are told that it is impracticable to fix wages for the future, and that it would be unjust, because the award can be enforced only against the employer; the employees may leave if the wages do not suit them.

Well, even if we leave the wage-rate out of court, there is still a great deal for compulsory arbitration to do, as we have already seen. But in truth there is no need to leave it out. So far is it from impracticable, that the fact is, wages are continually fixed for the future. The bulk of our business is based on such settlements. If a sliding scale is adopted, wages may safely be fixed for considerable periods in advance, and are so fixed to-day. The only question is, whether this shall be done by force or by the judgment of court. Which is the more likely to err? Which is the more likely to be lived up to? The employees are not bound to continue at the wages fixed by a strike or by voluntary arbitration. In practice, it will probably be found that they will be satisfied with the wage-rate fixed by the court of arbitration. It may not be all they asked for, but it will in most cases be likely to be an improvement on what they could get without arbitration, or, problematically, by a disastrous strike.

The possible want of mutuality is not a serious matter. There is certainly no more lack of it than in the case of fixing hours or charges. The question is at best theoretic rather than practical. There is no difficulty in getting men at the wages offered by the companies, and there will not be any difficulty in getting them at the wages fixed by a court or commission, so that the lack of power to compel men to work at the wages fixed does not practically detract from the reciprocal character of the award, to say nothing of other considerations. Even were the reciprocal element entirely lacking, it would not exclude the measure. This element is lacking in many contracts sustained by the

law, those, namely, which constitute a title of contract law called "unilateral contracts."

In any case, if they do not stay, it is clear the wages are too low, and the employer must raise them if he wishes to keep his men. The court merely fixes the limit below which the employer must not go. He may pay more, must pay more if his workmen find they can do better elsewhere. There is no substantial lack of mutuality. The employer is not compelled to continue doing business, and the employee is not compelled to continue working.

If the employer cannot make the business pay at the wages demanded, because of low wages in his business elsewhere, or for other cause beyond his control, he should bring his books and his evidence into court and prove the fact, and the court will be careful not to put the wage-rate where it would destroy the employer's business, recommending, if need be, such general legislation as would affect the whole trade and lift wages to a proper level without injustice to individual employers.

In dealing with monopolies, such as gas and electric plants, street railways, and other quasi-public industries, this difficulty will not in most cases be apt to rise. The adjustment of wages would not be complicated by questions of competition.

No method short of cooperation can deal with the wage question in a fully satisfactory manner. Compulsory arbitration is simply the best method attainable until cooperation comes.

3. It is said that governmental fixing of rates and wages amounts to confiscation; that conciliation and mediation are better than compulsory arbitration; that a court or commission can be empowered to examine the cause and justice of each industrial dispute at its inception, fix the responsibility, and leave public opinion to compel redress; that, whatever may be thought of the general philosophy of individual liberty, and its limitation by law, the right of free contract is a settled principle in our jurisprudence, and an employer has a right to fix the terms on which he will employ labor, without dictation from anyone; that compulsory arbitration will entail recognition of trades unions and the right to continued employment; and that it will delay more vital reforms by

alleviating to some extent the discontent of labor. To these and other objections the curious may find an answer in the American Fabian for March, 1897.

On the whole, it appears to the writer, that a strong industrial jurisdiction will be of great advantage in preventing strikes and, in many cases, lockouts also, in bringing employers and employed together in mutual conference and equality instead of in the relation of servitude, in promoting mutual confidence and respect, and in preparing the way for a nobler industrial system than any the world has yet seen.

### ADDRESS OF WILLIAM ALLEN WHITE TO THE KANSAS LEGISLATURE, JANUARY, 1920

Every age, every century and within these modern times, every decade, sees some business or interest formerly considered private business or private interest taken over in the public interest. Two hundred years ago when a gentleman had a quarrel with another gentleman it was supposed to be a private quarrel which should be settled under a private code called "dueling," but too many interested bystanders were injured and dueling was stopped.

What was once a gentleman's right, a very private personal right became a public matter, and dueling was stopped in the interest of the public. Time was when a quarrel between a slave and his master was a private matter and the master had private rights with his slave. That was stopped. Time was when a man's money invested in bank stocks or railroads was considered private money. It was considered private infringement of private rights to interfere with that money, but government affected all money invested in banks and public utilities with public interests and regulated and controlled that money in the interest of the public and took away personal rights for the public good.

The pirate's right was once a private right, but that right was removed for the public good, and now when labor and capital engage in a brawl which threatens daily processes of civilization we are taking away the right to that brawl and saying the quarrel must be settled in public interest.

Now, the chief interest which the public has in this

quarrel between labor and capital is the interest of justice to each. Government demands that every man participating in government shall do so intelligently. To do so intelligently he must have time and opportunity in his youth for an education, leisure in his manhood for information and reflection and steady employment to teach him habits of thrift and give him a stake in the country.

The public in establishing wages will be interested, not in labor as a commodity, but in labor as a citizen, and in ten years the labor unions will look back to this step of the Kansas legislature as the day that heralded the emancipation of American labor. The public is interested in capital chiefly, to see that capital gets justice, that it has a fair return and a profit sufficiently large to encourage enterprise, which is our God-given gift, the gift which distinguishes America from all the world, and by trusting to the public, that is to say, trusting to the organized forces of society in government, to adjudicate wages, capital will find a just and equitable bureau, or court, or commission, or what you will, and in ten years capital will regard this day as the beginning of a new era in its organization.

We are not trying to throttle capital and labor in Kansas, but to emancipate them from their own strangle hold upon each other, and to establish an equitable and living relation between them.

### THE CUMMINS' BILL<sup>1</sup>

I have now, with one exception, completed my explanation of the bill before the Senate. That exception is the part of the bill which proposes that the government shall adjudicate the disputes which may arise between employees of railway companies and the corporations, and which forbids a conspiracy or combination for the purpose of preventing the movement of commodities in interstate commerce.

I venture to say that no provision in any bill submitted to Congress in recent years has been more generally discussed throughout the country than the one to which I have just referred. There are some very extravagant praises for

<sup>1</sup> Speech of Hon. A. B. Cummins in the United States Senate, December 4, 1919.

it; there are some very unjust denunciations of it. I look upon it as a vital part not only of this bill but a vital part of our policy in the future so far as the basic industries of America are concerned. The committee has endeavored to find a solution of one of the most complicated and difficult problems ever presented to a legislative body. I am not prepared to affirm that the committee has discovered the only solution, and I am sure its members will be very glad to receive from senators any suggestions that may make the arrangement which we have provided for more just or more efficient; but I speak for substantially every member of the committee, a very large majority of the committee, when I say that it is our profound conviction that the civilization of America—I was about to say the civilization of the world—can not continue, can not endure unless organized society can find some plan to preserve industrial peace and order. To me the thought that to accomplish justice for those who may be interested in any dispute it is necessary to either freeze or starve the American people is unthinkable and intolerable.

I have always, I believe, entertained for men who worked not sympathy—for men who work need no sympathy—but I believe that I have always held for them the keenest interest in the struggles in which they have been engaged and the most sanguine hope of their ultimate success in obtaining the justice to which I believe they are entitled. But that does not settle this controversy.

Look at the situation now. I received a telegram this morning from one of the important cities in my state in which it was stated that the schools had all been closed; that the churches had all been closed; that every industrial enterprise had ceased—and it is a city of 25,000 people or more—and that if relief were not given in furnishing fuel before Saturday night there would be hundreds of homes in the community without heat. Our government is a failure if there can be found no way to surmount an obstacle of that kind; our government is worse than a failure if we can not in some way preserve the continuity and the regularity with which our basic operations are carried on.

The committee were deeply impressed with that feeling and we recognized that transportation is the basic industry



of the nation. It may not be more important from one aspect than many others, but none of the others can be conducted or carried on without transportation. Leave New York without transportation for two weeks and thousands of people will either starve or freeze, according to the season; indeed, they may do both. What I say of New York is true of Philadelphia, of Chicago, and of every great center of population.

We can not contemplate that situation with any complacency at all. If we can not find some way in which to avoid a contingency of that kind, then our boasted and vaunted institutions are mere shadows, and we should escape from them as speedily as possible. There must be some way in which a democracy can administer justice to all its citizens, which will render them so far content that they will be willing to carry on their vocations with reasonable regularity and continuity.

Mr. President, I was the author of a somewhat famous statement or declaration in what is known as the Clayton anti-trust law that the labor of a human being is neither a commodity nor an article of commerce. I believed in the truth of that statement profoundly then, and I believe in it now with even deeper conviction. The labor of a human being is not a commodity; it ought not to be dealt with as a commodity; it ought not to be judged as a commodity; for it is a part of human energy that may solicit and ought to receive the same high consideration from the world, from every legislative body, as all other energies of the mind or the body. But I am just as much opposed to Mr. Foster dealing with human labor as a commodity as I am opposed to Mr. Gary dealing with it as a commodity.

It is just as fatal to the welfare of the United States to allow the American Federation of Labor to deal with labor as a commodity or as an article of commerce as it is to allow the National Association of Manufacturers to deal with it as an article of commerce or as a commodity. This declaration, for which I make no apology and of which I am as proud as I am of any other act of my life, means that labor is to be lifted above the rules which apply to mere inanimate things; it means that the laborer is a man and entitled to the rights of a man, and that he should no more

sell himself to a labor union than he should sell himself to a manufacturer. It applies to both and all with equal force and strength.

I do not want to be understood that I am opposed to labor unions. On the contrary, I think they are an essential part of our industrial organization. I do not believe that we could long survive in peace and in order without labor unions. I think the gathering together of men in every occupation is not only defensible but I think it is highly beneficial and helpful in the maintenance of law and order. The laboring men in any particular enterprise or in any particular calling have just as much right to come together and work to promote their own interests and lift themselves up, if they can, in the great scale of human society as have the men of capital or the men of the professions, the men who labor, as it is said, with their minds instead of with their hands. I do not want it to be understood that there is in this bill or that there is in my mind any antipathy, any hostility, anything but admiration for labor unions.

I believe also in collective bargaining. There is no escape from collective bargaining. It is the decree of this age from which we ought not to attempt to escape. This bill is founded upon the necessity for labor unions, so far as the provisions to which I now have reference are concerned. It could not operate without the presence of labor unions. This bill recognizes collective bargaining; it can not be administered efficiently without collective bargaining.

I have said so much because there has been an industrious effort to misrepresent the bill. I have been amazed when I have read some of the lying reports which have been circulated throughout the country with respect to the objects which this bill seeks to attain, and I am saying what I have said to do what little I can do to overtake these gross and malicious misrepresentations.

It is said—it has been said to our committee—that this provision of the bill contravenes the natural rights of man, and is therefore unconstitutional. It is a very common thing to hear it said that this manacles the workingman, puts shackles upon his limbs, and reduces him to involuntary servitude. Nothing could be more wicked than an assertion

of that character. This bill does not interfere with the right of any employee of a railroad company or any official of any railroad company, because this bill applies equally to every person who serves a common carrier, if the common carrier is subject to the act to regulate commerce. The bill does not prevent, interfere with, or embarrass any man who desires to leave his employment. He can quit, or a hundred of them or a thousand of them can quit whenever they desire so to do. But I am not willing to allow the statement to go unchallenged that it is a fundamental and a constitutional right that every man can enjoy to quit his employment whenever he pleases. That is not true.

This bill does not interfere with his right at all; but a soldier can not quit whenever he desires. He can not cease his employment. An engineer upon a railway train can not quit whenever he may desire to quit. He can not leave his engine and his train so that human life would be imperiled, or so that property, even, might be injured. A physician or surgeon can not quit his employment whenever he may desire to quit, either morally or legally. He can not leave a dangerous operation half performed because it is his pleasure no longer to continue the work of his profession. I am mentioning these things simply to show that it is not true, broadly and fundamentally, that every man in the world can quit what he is doing at any moment he chooses to quit. The human right—and I am now speaking of the individual right rather than the group right—is subject to higher considerations than his pleasure.

Mr. THOMAS. I hope the Senator will not omit, in the category of obligations that he is now giving, to include men who are working under time contracts, whether collectively or individually.

Mr. CUMMINS. Quite true. That would not have occurred to me, but the observation is a very just one. I am mentioning these things not because they are material to the bill, for we do not attempt in the bill to interfere with the right of any employee of any railway company or any manager of any railway company to cease his employment whenever he individually may desire to do it, but I grow tired sometimes of hearing these broad generalizations which are

so cheerfully made by those who want to relieve the human being of all responsibility to society. We owe something to our fellow men, and, as the President of the United States has just said, that is the dominant duty that falls upon every conscious, responsible human being.

It is well worth while to read what the President has just said upon this subject. I am not altogether sure that I understand his reference, but I think I do, and if anybody here differs from me in that respect I hope he will make it known at this time.

The President, in the message which was delivered day before yesterday to the Congress of the United States, said, among other things:

Labor not only is entitled to an adequate wage, but capital should receive a reasonable return upon its investment and is entitled to protection at the hands of the Government in every emergency. No government worthy of the name can "play" these elements against each other, for there is a mutuality of interest between them which the Government must seek to express and to safeguard at all cost.

Truer words were never penned, a more timely warning to our industrial society was never given than in the language I have just read.

But I proceed:

The right of individuals to strike to inviolate and ought not to be interfered with by any process of government; but there is a predominant right, and that is the right of the Government to protect all of its people and to assert its power and majesty against the challenge of any class. The Government, when it asserts that right, seeks not to antagonize a class but simply to defend the right of the whole people as against the irreparable harm and injury that might be done by the attempt of any class to usurp a power that only Government itself has the right to exercise as a protection to all.

If I understand correctly the passage I have just read, it states views which every good citizen of the United States ought to entertain, and it expresses my own convictions with absolute accuracy. \* \* \*

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I think, though, that the program suggested two or three years ago was not complete. I may not remember it accurately, but it seems to me that the proposition then was that the strike should be prohibited for a time, pending an investigation with regard to the merits of the dispute, and that after the investigation was had, no matter what the outcome of the investigation might be, then the right to strike was

resumed and might be exercised at any time. That has been tried in our sister republic at the north. Canada has tried that plan, and I am bound to say that my examination of the history of the legislation and of its administration has not been reassuring.

This bill proposes to take away the right to strike at any time.

Mr. MYERS. Mr. President, if a right is inviolate, how can there be any predominant right?

Mr. CUMMINS. Mr. President, I am not going to analyze the exact phraseology of the message from which I have read and subject it to any such critical analysis. I believe that the President meant, when he penned those words and sent the message to us, that the right to strike must be subordinate to the welfare of the great body of the people, and that when the strike involved the interests of all the people, it must give way to some other plan for the adjustment of a dispute.

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This bill punishes only a combination or agreement between railway employees, and when I use the word "employees" I mean all the employees of the corporation, whatever their rank may be. Even if I were to grant that the individual right to cease employment or quit is perfect and complete, I could not grant that the right to enter into a combination or conspiracy to accomplish a purpose inimical to the welfare of society is a natural or constitutional right. This bill does not control the individual, but it controls the combination, the agreement, and it declares that if two or more persons, being employees of a carrier subject to the act to regulate commerce, shall enter into an agreement or a combination to suspend or prevent the movement in interstate commerce of commodities on which we are all dependent for life and for health for the purpose of enforcing some demand or claim against their employer, that such persons shall be guilty of a misdemeanor and shall be punished accordingly.

What right have I, who may believe I have a just claim against you, to enter into a conspiracy or combination or agreement with some other man or with some other men to



deprive you of the necessities of life until you yield to the demand which I have made upon you? It is monstrous. It can not be defended in any court of morals. A course of that kind can not be defended in any court of civilization and progress.

Mark you, I do not believe that the right of strike should be taken away from the employees without substituting something better in its stead. So long as it is a mere conflict between the employees and the employer, I would permit, of course, as this bill permits, a strike. The loss that might be imposed upon the employer does not greatly concern society, and there is no disposition on the part of the committee, I am sure, to interfere with a conflict of that character. It is only when the conflict, this endeavor to impose loss upon the employer, becomes destructive of society, of the welfare of the great body of the people, that this bill proposes to intervene and make it impossible.

I do not intend, Mr. President, to read the provisions, but I want to emphasize two things: First, the bill provides what it believes to be impartial tribunals for the adjudication of all disputes between the carriers and their employees. These tribunals, the details of which I shall not discuss at this moment, have jurisdiction of all the disputes which may come up from time to time between the railway corporations and their employees. Bear in mind that we have attempted to establish a tribunal with jurisdiction and with capacity to determine all the disputes which ever gave rise to a strike. In the second place, I hope you will bear in mind the character of the penal provision, which is that—

It shall be unlawful for two or more persons, being officers, directors, managers, agents, attorneys, or employees of any carrier or carriers subject to the act to regulate commerce, as amended for the purpose of maintaining, adjusting or settling any dispute, demand, or controversy which, under the provisions of this act, can be submitted for decision to the committee of wages and working conditions or to a regional board of adjustment, to enter into any combination or agreement with the intent substantially to hinder, restrain, or prevent the operation of trains or other facilities of transportation for the movement of commodities or persons in interstate commerce, or in pursuance of any such combination or agreement and with like purpose substantially to hinder, restrain, or prevent the operation of trains or other facilities of transportation for the movement of commodities or persons in interstate commerce.

This is the description of the offense; and remember that the offense can only be committed when the dispute is one



of which the government has taken jurisdiction, and which it has assumed the duty of adjudicating according to its very merits.

There is another provision which is necessary as a supplement to the one I have just read, as follows:

Whoever knowingly and with like intent shall aid, abet, counsel, command, induce, or procure the commission or performance of any act made unlawful in the last preceding section hereof shall be held guilty of a misdemeanor—

And so forth.

You will all recognize that this is simply a reproduction of our present statute with regard to accessories and those who aid and abet in the commission of a crime.

Mr. President, remembering that we have provided a tribunal which we believe to be a just, fair, and impartial tribunal for the adjudication of all controversies of the character I have described, I hope that this thought will be in every mind, that we are substituting the justice of the government of the United States for the justice which wage workers have hoped to secure through the strike. We are simply exchanging one instrumentality for another. We are offering an opportunity to secure justice which does not involve this awful sacrifice, which does not involve the wreck and ruin of industry, of homes, and of character. We are offering to do in controversies out of which railway strikes may arise just what our courts of justice have done for centuries with respect to controversies between man and man. Hitherto we have not regarded it as necessary that our government should undertake the adjudication which is here provided for, and I, Mr. President, have been very slow and very reluctant to go forward to that duty. But I perceive, and I have long perceived, that it is necessary, if we are to have regularity and continuity of employment. Therefore I am willing, on the part of my government, to undertake to do full and complete justice, so far as wages and working conditions are concerned, to those who enter into employment of this character. I believe, and believe from the bottom of my heart, that the laboring men of America will be more apt to secure justice or approach perfect justice through the intervention of these tribunals for the settlement of their disputes than they have ever been able to secure

through the medium of the strike, when you remember the losses that are entailed not only upon the general public, not only upon their immediate employer, but upon themselves. When will the striking miners be able to recoup the enormous losses which they have suffered during the last month?

It is said they would, if necessary, imperil lives of their fellow men in order to accomplish their purposes; but if we provide for them a tribunal in which they have confidence and for which they have respect and to which they can appeal, there could be no justification, no defense whatever, for the danger through which they are now leading the people of the United States. Think of this provision merely as a substitution of justice, so far as human government can administer justice, for the ends sought to be obtained by the strike.

I am not conscious of any change in my heart toward those who labor with their hands. I know through the experience of earlier years some of the hardships, some of the privations, some of the sufferings which attend the lives of men of meager compensation, but I can have no sympathy whatever with an effort to overturn the institutions of America through the disorders which must inevitably accompany these constantly repeated efforts to determine what is right and what is just by mere conflict and through the powers of endurance.

Possibly some Senator can suggest a better plan through which we may rise to a higher ground for the adjustment of these great disputes and for the calming of these intense passions. If any Senator can do so, I am sure the committee will be glad to accept any suggestion which may be made. We only know—and upon this I speak, I am sure, with absolute certainty—that in some way there must be found, in some way we must discover, the path from the tangle of conflict and of passion into which we are constantly led. I would have no faith in the intelligence of my fellow men, I would have no confidence in the patriotism of the people, if I did not believe that there is a solution for this mighty problem that will bring peace, order, prosperity, happiness, and content to all the people of the country.

COMPULSORY ARBITRATION IN RAILROAD  
LABOR DISPUTES<sup>1</sup>

Since the dawn of civilization, no more difficult problem has faced humanity than the problems involved in labor and its employers. Naturally, there always has been a contention between the employer of labor and the employee. Up to the present time, at least in modern times, the contest between labor and capital, so called, has been settled by force. For many years, in the ages that have passed, labor was not strong enough to exercise its power effectively, and the force of capital dominated it, forced unreasonable and unjust terms on it, and it has only been through the gradual evolution of the rights of labor that it has come to a point where it can fight for itself.

Through the last half century labor has been fighting for itself, until to-day organized labor constitutes the effective force in human endeavor, the dominant force between labor and capital. It may be said that that is not an unjust position for it to occupy, because it has fought its way to that position. It would not be if the only matter in dispute were a fight between labor and capital. If that were all that were involved in the issue, I would not be in favor of the provisions of this part of the bill.

But the issue here goes far beyond the question of labor and capital. As a matter of fact, so far as railroad labor is concerned, it has no issue with invested capital. Theoretically it may have, but as a practical proposition the wages of labor engaged in railroad industry have long ceased to come out of invested capital. They come out of freight rates and passenger rates as prescribed by the government, either through a director general or through the supervision of an Interstate Commerce Commission. The amount of labor involved and the value of labor's wage in this industry is so great that if it rested for one year upon invested capital it would destroy invested capital. Of necessity it must come out of the earnings of these roads, and the earnings of the roads must come out of the public.

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<sup>1</sup> Speech of Hon. Oscar W. Underwood in the United States Senate, December 18, 1919.

If that is the case, is it fairly stating the proposition to say that labor must still carry its weapon of offense against capital, that the value of its wage must be determined on the battle ground between labor and capital, and then, after the battle is fought and won, the result of the victory must be assessed against the public, which has had no interest or no hand in the dispute?

But it does not even stop there. The public are not only required to pay the bill, but they must bear the burden of the fight. The reservation to labor of the right to strike is either an actual fact, a weapon that is poised on its way to the blow, or it is a mere theory and is of no value. If it is of no value, if it is not going to be used, if there is no danger of a strike, if it is not an effective weapon for labor, why should we hesitate to adopt clauses in this bill that provide that two or more men shall not conspire to interfere with interstate commerce? There is nothing to be obtained for labor, if this is a mere theory, a weapon that will never be put into force.

On the other hand, if it is an actual weapon that some day may be used, who will pay the penalty? Of course there can be nothing else now but a universal railroad strike in this country. The day of a local strike is past. There may be a bubbling over here or there on the map. Labor leaders do not want local strikes. Railroad companies do not want them. It is only when the organization loses its control that a local strike takes place. The real effort is the effort to bring about a universal railroad strike in America.

That was threatened in 1916. We were told that it was imminent at that time unless remedial legislation was passed to avert it. Legislation was passed, and the strike was averted; and now we are told by some that there was no danger of that strike, that the men did not intend to strike, or that the representatives of the railroad companies would have surrendered. We are told by some that when labor came to Congress and asked that the Adamson bill be passed in order to avoid strike conditions the men who came here did not represent their organizations, and that they are in no way committed to the precedent set in that case. Nevertheless, a great strike was imminent, it was threatening the com-

mercial life of the nation, and was only avoided by legislative enactment.

Who would have paid the price if the railroads had stopped operating for 30 days by reason of a great strike? Capital would have been affected to some extent, because the earnings on capital might have been affected.

Labor would have suffered to a great extent, because labor's wages would have been wiped out for the period of the strike. But the sufferings neither of vested capital nor of labor would have been commensurate with the distress that would have come to every home of this land.

Stop the railroads from operating into the great cities for 30 days, and the population is starving. Stop the railroads from operating into an industrial center for 30 days, and commerce has ceased, and labor involved in commerce is out of employment. Stop the railroads from operating for 30 days, and the whole business life of the nation has ceased to function. That is the price that the people of the United States must pay for the privilege given to organized labor to declare a universal strike for any cause and to make it effective.

I am not going to contend as to whether the cause of labor is just or not. Men are human, whether we class them in the aggregate or as individuals, and human nature is prone to err on either side of the equation. I think it is safe to say that sometimes a strike is most just, for a most just cause, and at other times a strike is without reason or justice behind it.

But that is not the question involved here. The public, the hundred millions of people in the United States, are not those who determine whether the strike is just or unjust. They merely stand by to pay the penalty, and they will have to pay it some day, beyond peradventure of a doubt, if the Congress of the United States is unwilling to meet the situation and put remedial legislation on the statute books that will work justly to all men and avoid the dangers to the American public.

Some men speak of the so-called right to strike as if it were a human right, a right that belonged to men, like the right to live, the right to breathe, the right to work in an individual capacity. Organized labor itself repudiates the

foremost right of man, the right to work, when it stands for a closed shop.

The by-laws of many of these organizations proclaim that no man can work in certain shops or at certain employment unless he belongs to a particular organization, and works within the rules and according to the dictates of that organization.

If labor has the privilege and the right to deny to other labor the unrestricted right to toil and earn its daily wage, does it lie in their mouths to say that the Congress of the United States is taking away from them an inherent right that belongs to them when the Congress says, "You can work only under certain limitations," the Congress speaking for the whole people of the United States?

To strike! What does it mean? Men now talk of the right to strike as if it were the right to quit work. The right to strike and the right of the individual to quit his employment are two very different things.

One is the exercise of individual liberty, the other is the exercise of aggregate force to accomplish a purpose, to carry out the desire of the men engaged in the strike, or of the organization that has ordered the strike. One is a negative force, that hurts no man; the other is an active force, that injures many. This bill in its terms provides that nothing written in these pages shall be construed as preventing any man engaged in the railroad business from quitting his employment, and yet they speak of it as if this bill intended to coerce men to work when they did not desire to do so.

A strike is what it implies in its own terms. It is a blow, a blow directed with an object behind it, and it is the only way that it makes it effective. Is the Congress to stand here and allow any organization whatever to deliver a blow against the American public that may endanger the very life of the nation, or is it our duty to see that substantial justice is done to all concerned without the delivery of the destructive blow?

When the bill and these provisions were before the Committee on Interstate Commerce, Mr. Gompers appeared as a witness in opposition to the bill. I asked him some questions regarding the matter. I think his answers to the questions I asked thoroughly defined the position of labor in



regard to the bill and where their position leads to. I am therefore going to take the time of the Senate to read three or four pages from the hearings, so that that position may be made clear in the record.

I said this to Mr. Gompers:

I think some of the gentlemen who have come before us have misunderstood the purpose or the reason for the initiation of this legislation; but I am sure you have not because I think you recognize the fact that in recent years you and those you represent have been reasonably and fairly treated by Congress. Of course, this legislation comes with a sentiment behind it or it would not be here; but there is a sentiment among the people that is responsive to it, because Congress seldom acts without the sentiment of the people in framing legislation. Of course, you recognize that that sentiment comes from a fear that a general universal strike throughout this country would bring a debacle that would make the mass of the people who are not engaged in the strike suffer more than even the horrors of war. Now, that is the real thing that brings this legislation to the table. Now, I want to ask you if you oppose it or if you think it is ill advised to meet this situation by profit sharing or any other reward to labor except the just wage that is due it; how are we to avoid the danger to the public of an issue that comes, that may come at some time? Fortunately it has never come yet in that stressed form, the danger that may come to the public of a universal strike in this country that might last for months. Is there any other way to avoid it except by law?

Mr. Gompers answered the question as follows:

You can not avoid it by law. That is not the way to avoid it.

Then I asked:

What other way is there to avoid it? Of course, I do not so agree that it can not be avoided by law. You may be right; I may be wrong. I think the law goes a long ways sometimes——

MR. GOMPERS. Sometimes.

Then I asked the question.

But I would like to have your view. I think it as a serious problem that confronts the country. I am sure that you realize the seriousness of the problem, and I would like to have your view on that subject.

MR. GOMPERS. No one views that thought, much less than act, more seriously than I do; but I do know this: There has been no general strike of railroad men in the United States, and the attempt that was made in 1894 with the A. R. U. strike was, after a few days, practically abortive. The railroad brotherhoods stood as strongly against that general strike as any body of men could. They had more influence in determining that it should not pass those limits or reach those limits than anybody could have, the Congress included. The American Federation of Labor was a party to a conference in 1894 at Chicago where an urgent appeal was made to us to order or to declare for a general strike of all the workers of the country. The men of the American Federation of Labor were in conference with the chiefs of the railroad brotherhoods, and that was negatived. We were willing to do anything we could to bring about better conditions for the workers at Pullman, Ill., but we would not sanction, but gave our disapproval of, anything like a general railroad strike or a general strike among the workers.

Then I said:

Well, I am not talking about the past. I suppose the nearest we came to it was in 1916. But it does mean that that is what the public visualizes, and that is the sentiment that stands behind this bill.

MR. GOMPERS. The question is whether such a strike could be prevented if this measure were enacted into the law. That is the question.

Then I asked the question:

Well, that question, of course, I recognize. I recognize, as a rule, if this became a law that it would prevent a universal strike; but I may be in error. You may be right; but the question I would be glad to have you answer to go into the record, not only for you and me but for the country to understand is: Is there any other way that a universal railroad strike or the danger of it can be avoided if the Government itself does not act?

May I read that question again, because I want to impress it upon the record?

Is there any other way that a universal railroad strike or the danger of it can be avoided if the Government itself does not act?

Mr. Gompers answered:

I can not underwrite any measure or proposition that will absolutely prevent a general railroad strike. No one can. But this I do know: That fair treatment of the workers and with the workers' organizations is the best insurance against such a movement, such a strike. You will find the four railroad brotherhoods, with their executive officers, are men of experience, men of intelligence, and men with a fair sense of the responsibility that rests upon them. I do not mean only the chiefs of these brotherhoods; I have also in mind their associates on the executive boards and in the various divisions throughout the country.

There is no greater safeguard against such strikes than a reasonable course pursued by the companies and by the employers to treat with the workers and give these men a fair chance that they may have the opportunity of educating their fellows. If that chance is denied them, if every move they make is antagonized, their influence will be destroyed and the element that now would turn this country topsy-turvy would have the ear and the attention of the discontented in the organizations and the unorganized.

Then I said:

Well, I am interested in what you say, but that does not answer the question. I assume that you mean by your answer to the question that you do not think it is possible in any other way except by law, by this law, to eliminate the possibility, the future possibility, of a universal railroad strike.

MR. GOMPERS. I say with the full understanding of the words I employ, that the surest way of creating dissension, greater unrest, possibly leading to such a strike, is the provision in that bill. No other agency could provoke it more than that bill.

Yesterday I took occasion in some little detail to discuss the experience of the countries in which compulsory arbitration has been tried. Although it is not called a compulsory arbitration law, it still is, in other words, a law to determine wages, hours, conditions of employment; and if there be no majority of the two parties or four, then there is an appeal to another board whose findings and award are final in matters on wages, hours, and conditions of employment. It is final. There is no appeal anywhere. The men must obey. They must work, whether they will it or not. They can not quit work, they can not strike, if you please. You will never take away from the working people by law or by any other process the right of the workers to quit their employment.

Then I said:

Well, I would not do that if I had the power.  
MR. GOMPERS. That is done in that bill.

I said:

I do not think it is in that bill.

Mr. Gompers said:

It is in the bill, section 29.

I then said:

But the difference is, or I think it is, under the bill, that there is no limitation on the power of the workers, in singles or in pairs, to quit the railroad employment unless they do it for the purpose of interfering with commerce, the movement of commerce. Of course that is a different question from the mere question of their right to work. In the interest of the public we pass many laws restricting the rights of the individual. Of course, to keep the flow of commerce that keeps the people of America going, I have no doubt, and I do not think you would disagree with me, that we have a right to pass reasonable laws and regulations in the protection of the public. That is the way I view this part of the section. The real question involved in this bill is the question of the Government fixing the wage instead of the corporation fixing the wage. Although this is called arbitration, I think you will agree with me that this is not compulsory arbitration, but, in the last analysis, it is the fixing of the wage by the Government. The Government board has the last say and it fixes the wage.

MR. GOMPERS. Yes; and the men are compelled to work under that governmental award.

Then I said:

Well, just as the clerks in a department in Washington, with their fixed wages, are obliged if they want to work at all.

MR. GOMPERS. But they can not quit. They must work.

I said:

I do not understand it that way. I think you are wrong.

Omitting a few sentences there that are not pertinent to the issue, I said:

If it was intended to stop the movement of trains, yes; but not because a man was not satisfied with his job and wanted higher wages.

MR. GOMPERS. The man who wants to quit his job can quit. It is not a question of a man quitting his job, but two men in concert quitting their jobs in order to persuade or influence the employer to grant better conditions; and the idea of simply quitting is not the only thing. No man can quit his job without inconveniencing the employer or others. The stenographers in the Senate, if they informed the clerk, or the man who has them in charge, who gives them employment, that they are no longer willing to work for the rate of compensation, and they quit work, it would inconvenience the Senate very materially; and that is the purpose, to inconvenience the Senate sufficiently that the Senate will yield a fair consideration to these men.

I will not take up the time of the Senate in reading further from this statement, but I have read from it for the purpose of bringing out two facts: one is that Mr. Gompers, the supreme head of organized labor in the United States, declares that there is no other way to avoid a universal strike except by this bill; and he denies that this bill will do it, but he says there is no other way. Then he says

that a strike is an offensive weapon. In the last sentence that I read to you he admits the bill does not prevent the individual from exercising his personal liberty and quitting work when he desires to do so, but that it does prevent two or more from exercising the right to quit collectively so as to inconvenience their employer and by that course compel the employer to agree to their terms of employment.

That is the issue presented to the country. It is not disputed by the supreme head of organized labor. The question that confronts this body is whether or not, under those circumstances, the Senate of the United States intends to surrender the initiative—to recognize that there is no way to avoid the calamity of a universal strike, except by law, and then refuse to pass the law.

About the terms of the law I am not so much concerned. Write in this bill a provision that the mass of the American people shall no longer be in danger of a universal strike and I am willing for you to write the terms under which labor shall surrender that so-called right.

I fully recognize the fact that the force of the blow under the right to strike is the weapon by which labor must battle upward, and under ordinary circumstances and conditions it is entitled to use that force in its own behalf, if it does not endanger the public. I also recognize the fact that if that right is taken away from organized labor or unorganized labor, in justice and right they must be given some remedy in its place. Labor should not be disarmed and capital left armed cap-a-pie to ride them down; there would be no justice in that, but in every other walk of life we have established the courts of the land to avoid the blow.

Back in the generations that have passed man held his property by force of arms; to-day he holds his property by force of law. So long as the strike did not threaten the body politic, the government ignored the power of the strike, but now that the people, as a whole, are endangered, only the government can protect them.

Is it injustice to any man to prepare a fair and just tribunal in which the great issue of wages and working conditions may be worked out and solved, first, in the interest of labor, and, second, in the interest of the American public?

Mr. Gompers, in his testimony—and I take his testimony because he is the leader; the testimony of the chiefs of the brotherhoods who appeared before the committee was along similar lines—Mr. Gompers, in his testimony, says that the way to avoid strikes is through the moderation and conciliation of the railroad chiefs and their subordinates; the reaching of a common understanding on controverted matters; working out abstract justice through mediation. Have they any less opportunity to work out abstract justice through the mediation of a government board such as is proposed by the bill than they have in a board of directors of a railroad company? I think not. I think the position of labor, if it is only battling for what is justly its rights, is vastly more improved under the terms and conditions of this bill than if it were relegated back to the present warring conditions prevailing between labor and invested capital.

I think that the fundamental provision in this bill which is going to work out a result is the one that if arbitration fails, if conciliation fails, a board of men appointed by the President of the United States, representing the American people, assumed to be free from bias and prejudice on either side, shall sit in final judgment and determine what is a fair wage, not between labor and capital but a fair wage between labor and the public that pays the bill. I do not know of anything that would be a greater backward step for the Congress of the United States to take to-day than to abandon the efforts made during the Great War by the government and its government boards to see that labor was justly and fairly compensated and avoid the debacle of strike conditions and strike out the labor provisions of this bill. That is what it means.

How many strikes were adjusted during the Great War because there were in existence boards similar to those set up in this bill? Can anyone say that labor was unjustly treated, that the government wronged the labor of the United States in the trial of these matters? I think not. I say the man who predicts that a board representing the government of the United States can not do justice to labor doubts the very fundamental principle on which our government is established, doubts the ability of our government to do justice



between man and man, and preserve the liberties of the American people.

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If it is a good thing to prevent a strike temporarily—and it is—why is it not a good thing to prevent it entirely? If this can be worked out justly as a temporary matter by a government board and boards of arbitration, why can it not be worked out as the final conclusion? That is the question. If it can, why should we limit the process? It is either right or it is wrong in principle. It is either right or it is wrong in justice to the men who are earning their daily wage on these railroads. It is either right or it is wrong so far as the American public is concerned; and if it is right in part for temporary purposes, then it seems to me that the conclusion is irresistible that it is right in whole and should be adopted for the final conclusion.

There is nothing in this bill that prevents any man from quitting work if he does not enjoy it. If he thinks he can get a better wage or more satisfactory employment somewhere else, there is nothing in the folds of this bill that stands in his way. The only thing in this bill, if you bring it down to its last analysis, and eliminate all the preliminary procedure of arbitration and leading up to the question of final conclusion, is that a government board, appointed by the President of the United States and confirmed by the Senate of the United States, representing the hundred million people of this country, entirely free from bias on the side either of capital or labor, shall determine what is a fair and just wage to the men who carry the commerce of this country, and then reflect that determination back into the freight and passenger rates, and make it a charge against the shipping public of America, and I might say the consuming public of America. That is all there is in this bill.

But, like any other law that is in the interest of the people, the bill says that if you do not comply with the law, the government makes you comply with the law. What does that mean? That means that any man in railroad employ in the future, if the terms of this bill are adopted, who is not satisfied with his wage or his working conditions, can carry his complaint to the government tribunal without let or hindrance from anybody. He does not have to be the



tool of a labor organization or of a railroad company. He can exercise his own individual rights, and have the government determine what is a fair and just wage. I say that there is no danger of the government doing injustice to this great body of citizens of America. This is a republican government, a free government. The men whose wage scale will be tried in this government court cast 2,000,000 votes in the American Republic. Is it at all probable, under those conditions, that the finding of that board is going to be unjust and inequitable in their behalf?

I think not. If there is any bias to be expected on either side, it will fall on the side of the employee, naturally, but in the end it will be a check against any inordinate increase of wages that must be reflected into the freight rates that must be paid by the American people.

My friend the Senator from Kentucky [Mr. Stanley] was contending with me on the floor a day or two ago that possibly an increase in the freight rates of America might mean an increased charge to the American public of five times the amount of that increased rate. I am going to apply his own argument to himself, that where we charge \$1 more for freight the consuming American public must pay \$5 before its food and its clothes come to its homes.

There is no theory about the proposition which I am now going to state. Since 1916 and largely during the period of the Great War the wage of the railroad workers of America has increased a billion dollars. That is no theory; that is a fact. A billion dollars! If those who contend that increasing freight rates \$1 reflects \$5 into the cost of the product when it reaches the ultimate consumer are correct, then we are to believe that the increase of \$1,000,000,000 in the labor wage of the American railroad employees was instantly reflected into the freight rates because it could not be paid anywhere else.

The Director General of Railroads increased the freight rates 25 per cent and the passenger rates 50 per cent throughout America. He made a greater increase than that, because he changed classifications in many particulars that amounted to an increase in freight rates. So that the extent that the wage scale went up was reflected into the pockets of the men who ship the freight.

That being the case, is it contended that that billion dollars increase in wages reflects \$5,000,000,000 in the pockets of the American people? If it does, we have some idea of where, at least in part, the increased cost to the American people comes from.

The question of wage scale is not settled. I am not going to pass on the contention as to whether it is right or wrong. I am not informed. It is not my place to pass on it. But we know that the men engaged in the railroad world to-day are insisting now that there shall be a further increase in wages. They may be right or they may be wrong. If that wage increase is anything in proportion to the last one, then it would mean another billion dollars, and if the argument about freight rates as made by some here is correct, it would mean reflecting into the pockets of the consuming masses of American people another \$5,000,000,000.

Now, can the Congress of the United States, because it wants to be just to labor, because it wants to be fair to labor, ignore labor itself, ignore the clerk in the counting-house, the ditch digger in the street, the man on the scaffold building the great buildings of America, the laborer on the farm, and say that an organization in the United States composed of not over 2,000,000 men can reflect their will and through the power of the threatened strike force billions of dollars into the cost of living of the American people?

That is the issue at which I am looking. I do not stand here holding a brief against labor. I know that when labor ceases to battle upward the nation is dead; but when one class of labor, one clan in the great body politic of labor, desires to reserve to itself the right to stand independent of the government, to exercise its right or the so-called privilege to strike in order that it may enforce additional burdens on the masses of the American people, then, I say, the time and place have come when it is the duty of the government of the United States to function in the matter.

Do not tear down class or clan. I am not in favor of destroying union labor. I think union organization has done great things for labor, and sometimes it has done great injury to labor. I am not with union labor when it seeks to make the closed shop and deny to other men the right to

work. I am not with union labor when it says by force of arms, the force of the power to strike, that "we can invade the party politic and make the American public pay the price, right or wrong." I am not with union labor then, but I am with union labor when it says, "We are entitled to social justice."

That is the high ideal of all labor, the uplifting of the home, the education of children, the upbuilding of society—all that is theirs, justly theirs; but it is not in keeping with the exercise of the brutal power of the savage to strike down other men with a blow in order that they may take home what they have regardless of the right or the justice in the case. When you say that labor has the right to exercise or bring about a universal railroad strike in the country, to starve the American people into submission in order that it may dictate to them its will and put its penalties on the backs of the American people, then I draw the line and I will not go with you.

If that is the case, if that is the justice of the cause, I say, give them a government board to decide what is a just wage, and I will go with you as far as you can go to see that that board is just and fair and equitable. Then I say that the decision of that board is written into the law of the land, and I am prepared to send to jail the man who defies its conclusions, like I am prepared to send to jail the man who defies the law of the land.

The great sustaining policy of the American Republic is its just laws, and they can only be just to all by all upholding them. How are we to uphold them? We can not uphold the law by appealing merely to the conscience of men to obey the law. Most men obey the law because they respect it, but some men are highwaymen and obey no law except by the force of the strong arm of the government.

If you have worked out abstract justice through courts of arbitration and the final court of the government to solve the question in the interest of labor and have protected the American public against unjust demands, and at the same time have left labor free to exercise its individual liberty and quit employment when it elects, so long as it does not defy the law, then I say that you have, as this bill

does, responded to all the demands of abstract justice, and the man who defies it stands in defiance of the law and, like other lawbreakers, should be punished.

## LIBERTY AND LAW IN KANSAS<sup>1</sup>

*How the Industrial Court Protects the Public, Insures Justice to Labor, and Increases Production*

The Kansas law creating a Court of Industrial Relations followed the coal strike of last winter. It is not the result of an effort to legislate against either employing capital or labor. It came out of the public realization of the suffering which was brought by industrial warfare upon an unprotected people who had no part in bringing on the general coal strike but who were the defenseless victims of it.

When the coal strike occurred, this section of the country was almost entirely without fuel. Within two weeks there was suffering. The state took over the mines under an order of the Supreme Court appointing a receivership. Volunteers were called to operate the mines for the purpose of saving the public from the disaster of the coal famine. More than 11,000 Kansans volunteered their services within twenty-four hours after the first call.

From this magnificent offering we selected a sufficient number of men to man the strip mines, taking the personnel very largely from those who had been in the army service. In ten days these splendid young men, who volunteered under a sense of patriotic duty, produced enough coal to relieve the emergencies in two hundred Kansas communities. The thermometer was below zero much of the time, and the obstacles were almost insuperable, but the men worked from daylight to dark and very few of them ever inquired as to what the salary for their labor would be. They were paid \$5.70 per day, which was the average wage of the miners, but they worked without relation to hours.

### *Purposes of the Kansas Law*

While the state operation was still in progress, a special session of the legislature was called to enact a law creating

<sup>1</sup>By Henry J. Allen, Governor of Kansas, in Review of Reviews, June, 1920.

an industrial court for the purpose of placing upon the state the responsibility of regulating industrial strife. The law—which creates a strong, dignified tribunal vested with power, authority, and jurisdiction to hear and determine all controversies which may arise and which threaten to hinder, delay, or suspend the operation of essential industries—was passed with only seven votes against it in the lower house and two votes against it in the Senate. The new tribunal is known as the Court of Industrial Relations, composed of three judges appointed by the governor with the advice and consent of the Senate. The terms are for three years each and are arranged so that they overlap. This would safeguard the court against an entire change of personnel under any one governor. It is not a court of arbitration, but a court of justice.

The purpose of the court is—

(a) To make strikes, lockouts, boycotts, and blacklists unnecessary and impossible, by giving labor as well as capital an able and just tribunal in which to litigate all controversies.

(b) To insure to the people of this state, at all times, an adequate supply of those products which are absolutely necessary to sustain the life of civilized peoples.

(c) To stabilize production of these necessities, so that we will also, to a great extent, stabilize the price to the producer as well as the consumer.

(d) To insure to labor steadier employment, at a fairer wage, under better working conditions.

(e) To prevent the colossal economic waste which always attends industrial disturbances.

The basis of the law is in the inherent right of the state to protect itself and its members against anything that is prejudicial to the common welfare. This principle has been recognized for more than twenty centuries. It was inscribed upon one of the Twelve Tables of the Roman Law: *Salus populi suprema lex*.

#### *Effect of the Law Upon Production*

Last year, for the first three months of the period, there were something over forty strikes in the various mines of the Kansas district. This year there have been no strikes. During a few days while the court was dealing with the

refusal of Alexander Howat and some members of his staff to testify in a case which was brought by some of his own union miners, there was a temporary shut-down of the mines; but the actual effect of the law upon production shows that in slightly less than three months more coal has been produced in the Kansas district than during any other five and a half months in the history of that district, with practically the same number of miners.

One of the strong effects of the law is in the power of the court to require the continuous operation of industries, which are forbidden to shut down for any purpose to effect wage controversies or the price of the commodity to the public. In the past years, particularly in the coal-mining district, the mines have produced very indifferent results during the summer. It is stated that an average of one day per week would cover the operation of the mines. Under the new law, the operators will be obliged to operate with reasonable continuity, with the result that we will begin next winter with a coal reserve instead of a coal famine. This principle, applied to all of the essential industries under the supervision of the Kansas court, will have a very splendid result in stabilizing the market as well as providing the public with the normal output of production under favorable conditions.

### *Adjusting Miners' Grievances*

Soon after the court was created four hundred miners quit work as a protest against the law. The Attorney-General brought before him the officers of this group, who, when they understood all the provisions of the law, ordered their miners back to work. The suspension lasted only one day.

On that occasion, a group of miners having some general grievances brought these grievances voluntarily into the court. This was significant by reason of the fact that the method prescribed by the by-laws of the miners' union obligated these miners to bring their grievances through their local and district officers. But instead of going through prescribed channels, these miners came voluntarily into the court, asking for the adjudication of their grievances.

Alexander Howat, president of the district, called a meeting of his war council and passed a resolution declaring that



any miner thereafter who should bring his grievance before the industrial court would be fined \$50. If any local union or officer of any union appealed to the court for an adjudication of a grievance, that officer or union should be fined \$5000. In spite of this a number of unions—including the shot-firers, who affect every mine in the district—brought their grievances into the court.

During the hearings of the court, which were held at Pittsburgh in the center of the mining district, the most sympathetic and cooperative testimony was given by the miners. A number of very revealing conditions were brought out, which formed the basis for several decisions and orders.

For example, it was discovered that it had been the custom in the district for a good many years for the operators to charge the miners a heavy discount if their wages were paid in advance of the regular pay day, which was once every two weeks. Miners who needed the wages they had earned in the interim would collect the wages already earned, but in advance of pay day, and the operators would charge them 10 per cent. for the prepayment. No effort had ever been made to correct the abuse. The court corrected it at once, establishing the order that a miner might collect wages due him, paying only a minimum fee for the bookkeeping charge made necessary in the advance payment. The operators did not contest the order of the industrial court, and the new system is now working.

Another abuse corrected as the result of the miners' testimony was in relation to the charge for explosives. Ever since the decision of the National Commission, the operators, who were commanded to sell explosives at cost, did not state the price; and the miners were obliged to do their work under uncertainty as to what would be charged for powder and dynamite. Several efforts had been made by miners and operators to secure a conference on this subject with the miners' officials, but these efforts had failed. The court established a fixed price for explosives, conditioned upon the cost. This decision is of great importance, since it involves directly the wages of miners who mine their coal at a stated price per ton and pay out of this the cost of the explosives which they require for their work.

The testimony of the shot-firers, who brought their case

to the court in defiance of Alexander Howat's threat to fine them \$5000, exhibited the fact that for three years they had sought in vain for proper consideration of their grievances.

Another fact produced by the testimony of several miners, who had been upon a strike called by the president of the district in the mines of the Central Coal and Coke Company, was that while they had asked repeatedly for a statement of the grievance upon which the strike was called, they had never been told by their union president why they were striking. They had been idle for more than three months, living upon meager strike benefits without any intelligent appreciation as to why they were idle. They had lost in wages over \$800,000. The real issue upon which the strike was called involved less than \$2000, and its essence was a personal grievance on the part of the president of the district against the operators of the mine.

#### *Settling a Railroad Strike*

Another important decision of the court related to the employees of the Joplin and Pittsburgh Interurban Railway Company. In 1914, there was a strike of eighty days' duration, costing the men who were out of employment several hundred thousand dollars. The road connects two of the most important mining districts in the Middle West in the zinc and coal fields. The strike deprived the residents of this district of their most important mode of transportation, affecting not only the mining and commercial interests, but the agricultural interests. In 1918, while the country was in the throes of war, there was a strike of thirty-six days, causing not only great loss to both the wage-earners and the company, but shortage of production and general disaster. In March of the present year another strike was threatened, but the employees of the road brought their grievance into the Court of Industrial Relations. The case was brought on February 24, and in less than three weeks a hearing was had and an order made which was satisfactory to both the employees and the company.

In this case a singular evidence was given of the confidence of both sides in the justice of the court. Only a few of the complainants appeared in the court, although several hundred employees were involved. The order was

made effective, and the adjudication occurred without the loss of a moment of time. Even the witnesses who appeared in court lost less than a day, and there was continuous service on the line during the proceedings.

### *Our Typical Cases*

There are in the court to-day three cases in which strikes were threatened and would doubtless have occurred had it not been for the law. One of these is in the shop and roundhouse laborers of the railroad craft. A general strike had been called, but the national executive committee of the craft, by an almost unanimous vote, decided that in Kansas the action should be determined in the Court of Industrial Relations.

The case of the maintenance-of-way men, upon which a national strike is also threatened, has been brought into the Kansas court for settlement so far as that state is concerned; and there will be no strike in this craft in Kansas.

There are two interurban railway cases, in which strikes were threatened, but both grievances have been brought into the Kansas industrial court for adjudication and the roads are running without loss of service to the public or wages to the carmen.

An interesting sidelight upon the situation occurred in Kansas City some weeks ago, when the bakers of Kansas City, Kan., and Kansas City, Mo., met for the purpose of ordering a strike. The Kansas bakers refused to go out because of the law forbidding shut-downs in this industry, and the Missouri bakers declined to go out alone; so the matter was satisfactorily adjudicated without their going out in either city.

The first order of the court, soon after its establishment, was in relation to a wage controversy brought by electrical linemen in the Edison Company at Topeka. It was for an increase in wages. The testimony clearly revealed the fact that the operatives of this department of public service were paid less than the trend of wages for expert service in the district. The whole subject of cost of living and comparison of wages was gone into. The court granted an increase of wages to the men that was entirely satisfactory to them and the corporation—which not only obeyed the order of the

court promptly, but made the increase of wages retroactive to cover the period since the request for an increase was made. No time was lost by the employees during the adjudication of this controversy, and the public received the benefit of continuous operation of service.

In the order of the court a hint as to the spirit of this tribunal may be had from the following quotation:

The court is very desirous to do nothing in this case which will unduly burden the respondent. However, it must be admitted that wages to labor must be considered before dividends to the investor, and that business which is unable to pay a fair rate of wage to its employees will eventually have to liquidate. The Kansas law imposes upon the court the obligation, so far as it has power to do so, to assure to labor a fair wage and to capital a fair return.

The Kansas court differentiated between a living wage and a fair wage, and it declared a fair wage to be that which will enable the workmen to procure for themselves and their families all the necessities and a reasonable share of the comforts of life.

They are entitled to a wage which will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age.

These are typical cases which have received adjudication, and in all of them the benefits arising from the fact that the court not only had power to make an impartial survey of the case, but also the power to render final decision, was generally recognized by the public.

### *The "Outlaw" Railroad Strike Fails*

We suffered less in Kansas during the "outlaw" railroad strike than elsewhere. A few men in Rosedale and Argentine went out, and the attorney-general went to the field for the purpose of taking charge of the situation. After a few arrests were made, practically all of the men returned to work. These cases have not been heard as yet by the court. In all the other railroad centers of the state there were no strikes, the leaders being opposed to placing themselves in violation of the law.

The attitude of the court toward the interurban lines and the lines operating within the state has brought a new sense of security both to the operators and operatives. They real-

ize that the strike is no longer necessary; that all their grievances are justiciable in this court.

In one decision, that of an interurban company, both wages and traffic rates were increased, and all three parties to the triangle—operators, employees, and the public—have recognized the justice of the decision.

No grievances have been filed touching the packing, milling, or clothing industries. A shut-down was threatened some weeks ago in the packing district and an investigation was started by the court, but the difficulty passed away without the necessity of court action.

One of the direct results we have observed in the operation of the court is that it reduces the poignancy of the industrial quarrel. The mere presence of an impartial court seems to have encouraged both operators and operatives to approach each other in a new spirit of conciliation.

### *Protection of the Public*

It is believed that the law is going to prove even more effective to wage-earners than to employers. Naturally the court is there to protect the weak and to guarantee justice. For fifteen or twenty years we have gone through a reluctant process of regulating employing capital. Many wrongs have been corrected through legislation. Indeed, practically all of the progress which has been made in the regulation of working conditions, fair wages, and hours of labor have come as the result of laws looking toward justice.

In Kansas a few years ago the operators maintained that the most emphatic of all evils was the company store, in which miners made purchases with company script. This system was wiped out by State legislation. All of the safety appliances, working conditions in mines, modern bath houses for miners, and rescue stations were established by legislation. The rescue stations are operated at the state expense, Kansas being one of three states in the Union to adopt this system.

The entire progress of legislation has been along lines favorable to the workers, and the Kansas Court of Industrial Relations, while holding this to be a paramount consideration, has had to look to the necessity of protecting the public as well as capital.

The difference between the Kansas effort and the efforts of



compulsory arbitration in Australia and other countries is that in laws such as Australia created the main feature is the protection of arbitration agreements. In Kansas the main feature is the protection of the public. We are going upon the broad principle that society has the same right to take jurisdiction over offenses committed in the name of industrial warfare that she has had, through all the evolution of government, to take jurisdiction over other wrongs.

The quarrels between capital and labor are to-day the only ones against which government does not protect the public. We have done away with every form of private conflict from dueling to fist fighting, save alone the conflict between capital and labor. Eugene V. Debs, in his testimony in the Phelan case, said, "A strike is war, not necessarily war of blood and bullets, but a war in the sense that it is a conflict between two contending interests or classes of interests."

Kansas, which once sympathized altogether with labor, as did the general public, out of a realization in that early day that the employers were unduly oppressive, now realizes that if capital has been selfish and ruthless, labor has shown itself to be the same; and the general demand is that hereafter the public shall be considered and protected against industrial war. The real purpose of the Kansas law is to protect men in their right to work, rather than to deny them the right to quit.

Our union labor friends forget that government has power to protect the good order of society and that in the exercise of this power it has taken jurisdiction over the most sacred relations of life. The relation of the husband and wife, of the parent and the child, come under the jurisdiction of our courts. Government says to the parent that the child shall not work during the years when it should be in attendance upon the schools of education.

I think the finest definition I have ever read as to the purpose of government is that of John Adams, who declared that the chief aim of government is justice. This is the chief aim of all our human relations. There is no reason why industrial controversies should not be subject to the rule of justice. There is only one source upon which we may depend for its impartial standard, for its dignified utterance, for its impartial administration, and that source is government.

The question of the hour is as to whether this government shall be regulated by all the people under the safeguard of



constitutional majority, or whether it shall be regulated by the hard-and-fast unionism driven forward by radical and un-American labor leaders. If moral principles do not exist in American institutions for the establishment of government over industrial warfare, then American institutions are doomed to failure.

### *Similar Laws in Other Communities*

The fundamental difference between the Kansas system and that proposed by the President's second Industrial Conference lies in the fact that the Washington conference, which provided an elaborate and worthy system of conciliation, still recognizes a controversy between capital and labor as being a private quarrel. There is no protection guaranteed to the public. The Kansas Court of Industrial Relations in its broad inherent powers maintains the same possibilities of conciliation, welfare work and group discussion that are provided in the report of the second Industrial Conference, but when all of these efforts at conciliation have failed the Kansas court takes charge of the controversy and settles it upon terms which give proper recognition to the public, to labor, and to capital, and makes its decision final.

I believe that ten State legislatures and two constitutional conventions have already considered the Kansas plan. Nebraska wrote into her new constitution last winter an article making it mandatory upon the next legislature to adopt a Court of Industrial Relations, with the intention of placing all industrial controversies under the regulation of the State. Illinois is now considering—with prospect of success, I understand—the submission of such an article in her new constitution. New York, which considered the principle of the Kansas court, has made some legislation along compulsory arbitration which marks an advance. Massachusetts is also considering with deep interest industrial court legislation. Oklahoma is doing the same. The Chamber of Commerce of New Orleans tells me that the new Governor of Louisiana, Parker, hopes to secure the enactment of a program similar to ours.

Considerable is said about the failure of the industrial courts of Australia and Canada to prevent strikes. In Australia the right to strike is not prohibited, and a provision exists in some of the Australian courts for an appeal to the Parliament, and an unfavorable vote in either branch of Parliament wipes out

the decision. Obviously, under some circumstances, the tendency would be to reduce the effectiveness of the court. Notwithstanding this, however, the codes of the Australian industrial courts have grown in strength, and Australia is still holding fast to the process, adding new purpose and new scope to an effort which in the beginning was brought about by labor unions themselves for the purpose of giving effectiveness to grievances.

The Canadian act of 1907, amended in 1910, provides that where a strike or lockout is threatened in the industries of railroads, steamships, telegraphs, telephones, and mines, and before such a strike or lockout can legally take place, the parties must refer their differences to a board for settlement. In Canada each party to the dispute appoints a member to the board of arbitration. This plan contains the essential defect of leaving the public out of consideration and of placing the responsibility of settlement in the hands of interested parties.

Nevertheless, in 1916, out of 182 applications for adjudication under the Canadian law, every strike was averted except two. On the other hand, in the United States, where we have no laws for the regulation of capital or labor, 321 strikes occurred during October, 1916, alone. The Labor Review for June, 1919, says that in 1918 there were 3181 strikes in the United States and 104 lockouts. In New York alone there were 662 strikes and 21 lockouts.

The most distinguished incident of effective remedy under an impartial tribunal was in the instance of the anthracite coal strike by the committee appointed by President Roosevelt. Advocates of neither side were on this board. All were impartial men. It was, in effect, an industrial court. The agreements which resulted from that impartial tribunal have worked such effectiveness that there has been no general strike in the anthracite coal district since that time.

### *Outlook for the Future*

Whatever tendencies may be marked at this hour touching the migration of labor indicate that Kansas is to receive the friendly consideration of conservative union men. Various threats have been made by Alexander Howat that union labor would leave the State. It is possible that the more radical type of union leadership will go to fields where they still have the privilege to menace government; but in Kansas the conser-

vative type, a large percentage of whom own their own homes, welcomes the advent of government into the situation, and I believe we will build in Kansas the mecca of a new type of industrial activity.

In the other unionized trades the criticism of the Kansas law is confined very largely to the leaders, who realize that the success of the law reduces the need of the radical type of leadership and makes of the union a more benevolent type of organization, standing for the benefit of its members, the protection of its contracts, and the progressive study of the welfare of the crafts. One of the most interesting experiments now being carried on under the industrial court is the welfare canvass which is now being made in the Pittsburgh district. Not only the miners themselves, but also their wives, are taking a keen interest in the effort of the court to establish better housing, working, and living conditions in all cases where material improvement is necessary.

In conclusion, I am glad to say that there is a growing tendency to believe in the industrial court; and this confidence will grow with the growth of understanding of the decisive benefits it bestows upon labor. Capital, which did not welcome the court, is not fighting it openly and is, I believe somewhat impressed with the fact that impartial justice will not be as expensive as industrial warfare has been, because through the operation of the court we save economic waste.

## GOVERNOR ALLEN'S DISCOVERY<sup>1</sup>

The most significant thing that has happened to us within the last thirty years is the merging of our large industrial concerns into what we call trusts. This merging has given these concerns a power beside which the political state becomes a mere handcuffed David fighting Goliath. Our so-called efforts to "bust" them has been admittedly so unsuccessful as to make it almost humorous. This monopoly in industry follows so inevitably and so irrevocably the laws of industrial progress that no less an expert than the late J. Pierpont Morgan characterized our futile trust-busting efforts as attempts to unscramble the egg. In our legislative halls their power is so

<sup>1</sup> Buffalo Commercial, April 20, 1920.

strongly felt that we refer to it as the power of the invisible government.

Now side by side with these gigantic merchantile combinations, union labor ever increasing in power has come to the front within the last twenty years. Even now in two of the essential industries, mining and railroad, the mere talk of a strike is sufficient to throw the whole nation into a state of worry bordering on despair. And now that the railroad workers have gone into business on their own hook on a rather extensive scale, manufacturing wearing apparel to be sold to the workers at greatly reduced price, their power is growing by leaps and bounds. Within two years, or three or four at the most, it is alleged, no power now residing in the political state can hope to compete with them. They will be able to get for themselves what working hours they want, and their wages will be a matter of their own determination.

These are the two most remarkable things that have happened to us within the last three decades. And while to most of our citizens these things are admitted to be of the utmost importance, except for idly ranting about them, or attempting to legislate against them in shameful futility, our so-called political leaders have not concerned themselves with these sinister portents of impending conflict. They go about like Don Quixote of old, mouthing fine phrases and storming windmills. They are as oblivious to the things that threaten us and to any effective remedy for them, as an ostrich with his head in the sand is oblivious to the man on horse-back pursuing him.

Now this discovery which Governor Allen has made is nothing more than this:

*In compensation for the growth of power of our industrial organizations, labor on the one hand, and capital on the other, in order to compete with these two groups, and in order to protect the public against depredations from either or both, the political state must assume power greater than can be wielded by either or both of these.*

Hence: The state Industrial Court, which in this matter is the highest legitimate and legal expression of the will of the people, and which today is as superior to these groups as the Governor of Kansas is superior officially to the president of the Topeka chamber of commerce, or to the president of the brick-layer's union.

This power invested in the Industrial Court is so reason-

able and so sane from the standpoint of public safety, and so simple to understand, that about all there is left to wonder about in connection with it is why some one hasn't thought of it before. The ordinary citizen who has time to read and to reflect on the events of the day, who is blinded neither by partizan politics nor by desire to get a political office, has seen long ago the need for some such machinery to curb the growing power of the two opponents in industry, and since this Industrial Court promises to deal fairly with the claims of both, holding fast, however, as its highest ideal, to the welfare of the general public, he takes to the Kansas remedy for industrial disputes as a duck takes to water.

Governor Allen is seeking to give us something vital and of immediate concern to us:—an increased production and consequent lowering of the cost of living through the abolition of the strike in order of size, smallest first.

### BRIEF EXCERPTS

This [Kansas industrial court law] is the most comprehensive attempt yet made to protect the public in cases of industrial disputes likely to affect its interests.—*Monthly Labor Review*. 10:809. *March*, 1920.

Compulsory Arbitration has worked well in New Zealand: since its introduction [to date, 1912] only four or five unimportant strikes have taken place, sweating seems to have been practically eradicated, the decisions of the court, with a few trivial exceptions, have been loyally obeyed, and the industry of the colony has grown enormously.—*Adams and Summer. Labor Problems*. p. 324.

Freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guarantee of liberty does not withdraw from legislative supervision that wide department of activity which consists in the making of contracts or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint—not immunity from reasonable regulations or prohibitions imposed in the interests of the community.—*C. B. & Q. R. R. Co. vs. Maguire*, 219 U. S. 549.



Three days ago in St. Louis there met the executive committee of all the barrow-wheelers, the men who work in the sand-pits, that order of the railroad craft which is just below the maintenance of Way men, and they talked about their strike and by a vote of seven to two they declared that they would strike in every state in the Union except the state of Kansas (Applause), and in the State of Kansas they would bring their cause into the Court of Industrial Relations.—*Gov. Henry J. Allen. Law and Labor. 2:88 April, 1920.*

"Down in the Kansas mining district," said Gov. Allen, "the miners have run about a day in a week in the summertime. Why? They didn't want to make any reserve of coal. They preferred to sell upon a market that was short. Under this law there is no shutdown. We have produced in the last three months more coal than ever was produced in any other five and a half months of operation. That means that the miners have been steadily employed and that next winter Kansas will begin with a coal reserve instead of a coal famine.—*New York Times, April 23, 1920.*

If there are courts in this country set up (and there are federal and state courts) for the purpose of adjudicating claims and contentions between individual citizens, in the name of sense aren't the American people wise enough, big enough, strong enough and fair enough to set up in this country courts where differences between the employer and the employee groups can be adjudicated and adjusted without carrying on industrial warfare that means irremediable damage to the American people and to the public?—*Governor John J. Cornwell of West Virginia. Law and Labor. 2:83. April, 1920.*

Perhaps nothing so completely demonstrates the strength of the New Zealand system of arbitration and its underlying basis of social justice, as the Dominion's experiences with syndicalism and the efforts of the syndicalists to carry out a general strike, during the latter part of 1911, 1912, and 1913. The effort was a complete failure; and although more than fifty strikes were called during the period, all of them were lost; direct action was thoroughly discredited; the arbitration system and the government which stood sponsor for it emerged from the contest with added glory.—*Mote. Industrial Arbitration. p. 145.*

It is claimed that involuntary servitude is involved in compulsory arbitration. But that cannot be called involuntary ser-



vitute into which a man voluntarily enters. Nobody is obliged to become an engineer or a fireman, but if a man voluntarily becomes an engineer or a fireman, the government has the power to make him keep his contract. This was expressly held by the Supreme Court in *Robertson v. Baldwin*, 165 U. S. 281. The court said that a service which was knowingly and willingly entered into could not be called involuntary.—*Everett P. Wheeler, Proceedings of the Academy of Political Science*, 7:85. January, 1917.

The purpose, of the section of the bill at which the amendment is aimed is to substitute law for force in the settlement of disputes between citizens. The entire principle of orderly government is involved. It is only from the tolerant indifference of the American people, inculcated by the great fortune which we have enjoyed and the abounding riches of the land, that we have tolerated so long the violence, the intimidation, the suffering, and the death which have come from the common practice of the use of force in the form of the suppression of industries essential to life as a means of settling private disputes.—*Senator Miles Poindexter, Congressional Record*, December 18, 1919.

The Industrial Court [of Kansas] provides an open door for labor; a tribunal to see that labor gets all that it is entitled to get and gets it without the old strong-arm methods of strikes and riots. It pledges the good faith of the State to see that labor's rights are protected and at the same time that capital is not endangered. But above all, the Kansas Industrial Court bill is a public-welfare measure. It is not, properly speaking, an arbitration bill. It is not, as labor representatives call it, an "antistrike" bill. It is a bill to give the public that protection which the people can not get outside of government activity, and every restriction of the measure on capital and on labor alike is merely incidental to the protection of the people.—*Kansas City (Kan.) Times*.

If the public is disposed to protect absolutely everyone against imposition on the part of capital or labor it should not depend upon voluntary arbitration but should establish and administer laws which will have complete jurisdiction over both groups of citizens, and then to rely upon the continuance without interruption of the enforcement of law and order, so that every individual or interest shall be protected in freedom

of action or nonaction so long as there is no opposition to any of the statutes in force. Employers and the body of employes clearly recognize that it is for the pecuniary interest of both to maintain peaceful and friendly relations, and every honestminded person admits this will redound to the benefit and comfort of the general public.—*Judge Gary, Chairman of Executive Board, U. S. Steel Corporation. Iron Trade Review. 66:171. January 8, 1920.*

It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessities of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act.—*Section 6 of the Kansas Industrial Court Law, 1920.*

No capitalist has the right to close down his works in order that he may make a higher profit after a while while he freezes the American people for lack of fuel. No laborer has the right to go out and shut off the production of coal at the beginning of November, when winter is just beginning, in order that he may have a higher wage or shorter hours.

When that sort of thing occurs, then these 80,000,000 people have something to say; and, as far as I am concerned, and I represent them here—and through my voice, if through nobody else's—they shall be heard; and their voice is, "A plague upon both your houses." Obey the law. "Submit your differences to just arbitrament. Leave me and my wife and my children free of murder at your hands," whether by capitalists closing down the coal mines or by labor closing them down, or whether by capital or labor, either one or both, shutting off transportation.—*Senator John Sharp Williams, Congressional Record December 18, 1919.*

Take for example the [Railroad] strike that was threatened last August [1916]. I was in Chicago at the time, and with a good many other New Yorkers was much in doubt as to whether I could exercise the right to get home. In Chicago during that last week before the fatal Monday, the 4th of September, the trains were running all night, bringing provisions into that city which on the following Monday under the decree of the brotherhood was to be blockaded. The city was to get no milk, no wheat, no grain, no food of any sort—if was to be starved out. Is that a right to be protected by the constitution—the right to starve people? The cities in this country now contain half of the whole American population. The fact that we live in cities prevents us from raising our own food. Is it not within the power of the government to provide a method by which such forcible blockades can be prevented?—*Everett P. Wheeler. Proceedings of the Academy of Political Science. 7:84. January, 1917.*

The preamble to the Constitution of the United States recites that the Constitution is adopted, among other purposes, to insure domestic tranquillity. Without some means of prevention of nation-wide railroad strikes there can be no assurance of domestic tranquillity in this country. By the Constitution Congress is given power to regulate commerce among the several States. To regulate commerce among the several States certainly includes the power to prevent interference therewith or extinction thereof; without railroad transportation there can be but little commerce among the states. Interference with the United States mail is unlawful and punishable. Why should not interference with interstate commerce be made unlawful and punishable? Transmission of the mail is only one phase of interstate commerce. Transportation of passengers and freight is of more vital importance than transmission of mail.—*Senator Henry L. Myers. Congressional Record. December 8, 1919.*

Judges decide questions of rent between landlord and tenant in Ireland. Judges in this country run railroads as receivers and fix prices of all kinds for laborers and shippers, for goods and supplies. Judges decide between opposing interests as to amount of alimony, allowances in Probate Court, and awards for damages. In bankruptcy and receivership proceeding they deal with the most complicated questions of commerce and fi-

nance. They have power greater than the jury in settling the prices at which we sell our legs and arms to the railroad companies at unguarded grade crossings. Amateur judges and professional judges have shown themselves able in all kinds of arbitration proceedings to make decisions that were just and acceptable to both sides. Even if the presiding judge of the arbitration court with a casting vote were a "tool of the capitalists" the grist of this mill could not but be better than the grist of the injunction mill.—*Henry D. Lloyd in "Capital and Labor" p. 185.*

There is no doubt that the arbitration acts in Australia have done much good in the way of abolishing sweating in factories and other places. It must also be conceded that the great expansion of unionism of late years (about 60 per cent of working men, and over 20 per cent of working women in Australia are members of trades-unions) has been aided by arbitration, because of its compulsory rule that all must register in an industrial body before they can have any status in the court.

Then again, the whole matter of "preference to unionists" may be said to lie at the door of industrial arbitration, since it compels men to organize themselves in a union to secure advantages which those outside unions cannot obtain. That will be admitted by most workers in Australia. But for the arbitration courts, and its compulsory registration requirements, it is doubtful whether we would have ever had the "preference to unionists" clause. We must admit then that we have secured some advantages from arbitration, if only from the point of making us strong industrially.—*W. F. Ahearn. Reconstruction. 2:24. January, 1920.*

Under the present conditions, the railway employees feel that they cannot surrender their right to strike. The necessity would no longer exist for the exercise of this power, if there were a wage commission which would secure them just wages.

. . . . . A strike in the army or navy is mutiny and universally punished as such. The same principle is applied to seamen because of the public necessity involved. A strike among postal clerks, as among the teachers of our public schools, would be unthinkable. In all these cases the employment, to borrow a legal phrase, is affected with a public use; and this of necessity qualifies the right of free concerted action which exists in private employments.

However, if the principle be accepted that there are certain classes of service thus affected with a public interest and men who enter them are not free concertedly to quit the service, then these men must be guarded in the matter of wages and conditions by public protection; and this it is believed can best be done through an interstate wage commission.—*Report of the Board of Arbitration in the Matter of the Controversy between the Eastern Railroads, and the Brotherhood of Locomotive Engineers, 1912.*

It [compulsory arbitration] has often been supposed to have the effect of weakening organization among the workers, but such is not the case in Australia, where the unions are largely instrumental in initiating board proceedings and nominating board members. The law of Queensland is partially due to the insistence of trade unions upon legal regulation. Taking Australia as a whole we find that, according to Mr. Knibbs, the Commonwealth statistician, the estimated membership of all unions increased from 54,888 in 1891 to 97,174 in 1901. Wage regulation during this period was at a minimum. But from 1901 to 1912 the number of union members increased from 97,174 to 433,224. This increase has been accompanied by the concentration of members into larger unions. Federated unions, encouraged by the Commonwealth act, are increasing in number. In New Zealand, under compulsory arbitration, organization has been especially encouraged. The membership of the employees' industrial unions increased from 8,230 in 1896 to 71,544 in 1913. Likewise, in Western Australia and New South Wales, where trade unions are registered under the arbitration act, unionism has been strengthened and consolidated.—*Paul S. Collier. Proceedings of the Academy of Political Science. 7:33. January, 1917.*

My opinion is that when the Kansas law has been upon our statute books for a year, its best friends will be the members of union labor, because it offers to them final decision. Continuously the Court is deliberating upon labor conditions, housing conditions, living conditions, working conditions; and the miners of the bituminous district whose activity brought on the Court are today eagerly and anxiously waiting, hoping for the success of the Court. Why? Because it keeps them in continuous employment. Their radical leaders cannot call them out on strike. That is one reason, and the other reason is that

it provides that the mining operators shall preserve a reasonable continuity of operation which has not been done in past years in Kansas, where the coal mines have operated during the summer months about one day a week. Why? Well, it seems to be a more attractive proposition to sell coal on a market that is a little short of coal than on any other sort of market; and so our mining operators have operated in that way. The new law will make it not only possible for the miners to work the summer through, but it will stabilize the coal business; and we in Kansas will begin the winter with a coal reserve, instead of a coal famine; and it is a very desirable thing; the law works both ways.—*Gov. Henry J. Allen. Law and Labor. 2:89. April, 1920*

WORK OF STATE BOARDS OF VOLUNTARY ARBITRATION  
AND CONCILIATION<sup>1</sup>

<i>State</i>	<i>Years covered</i>	<i>Number of strikes</i>	<i>Settled by arbitration</i>	<i>Settled by conciliation</i>
Illinois .....	1895-1899	1128	7	22
Massachusetts ....	1894-1900	516	53	72
New York .....	1894-1900	2156	11	76
Ohio .....	1893-1899	744	8	35

<sup>1</sup> Adams and Sumner. *Labor Problems*, p. 299.



## NEGATIVE DISCUSSION

### COMPULSORY ARBITRATION IN THE RAILROAD ENGINEERS' AWARD<sup>1</sup>

The most important recent development in industrial affairs is the award of the special commission appointed to adjust the differences between the eastern railroad companies and their organized locomotive engineers. In addition to performing that duty the commission made a recommendation in comparison with which all other issues dwindle into insignificance. This recommendation proposes compulsory arbitration to secure "permanent peace" between the railroads and their employees.

Everybody recognizes that peace is a desirable goal, that war is destructive and an interruption of progress. But in our zeal to reach this ideal let us beware lest we sacrifice justice and freedom to peace; lest we forget the ancient chains that held men in bondage. Peace under this fair sounding name is not of a nature to promote human welfare.

It is an unworthy desire that wants peace at any price, for we know that peace may follow the recognition of just claims and ideals, and "peace" may exist because men are shackled, powerless to protect themselves. Only peace with honor and freedom will be tolerated by men of nobler ideals. Compulsory arbitration means not peace of that sort,—but peace at any price, any sacrifice of rights, liberty and individuality, while the moral self grows flabby and soft.

Because of the importance of the board's recommendation, it behooves organized labor to study the award and the recommendation with greatest care.

The board making the report was selected to adjust difficulties arising out of specific wage demands. Last January the Brotherhood of Locomotive Engineer presented to the railroads a series of proposals involving uniform rates of pay, uniform classifications of service, and uniform working rules throughout the eastern division.

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<sup>1</sup> Samuel Gompers, President, American Federation of Labor. *American Federationist*. 20:17-31. January, 1913.

There are fifty-two railroads in the eastern division, comprising practically all roads east of Chicago and north of the Norfolk and Western Railroad.

In 1910 these railroads operated more than one-fourth of the total mileage of American railroads, or over 66,000 miles of track. They carried about one-half of the freight traffic of the United States and more than two-fifths of the passengers. The companies in 1910 paid their engineers about \$38,000,000 in wages, or 41 per cent of the wages received by railroad engineers that year. The population of the region served by these railroads included more than 40 per cent. of the total population of the United States. Approximately 30,000 engineers participated in the concerted movement to better their working conditions and to increase wages. From these figures the importance of the labor dispute becomes at once apparent. The interests involved were of tremendous magnitude.

The representatives of the engineers met those of the railroads in conference three times during the month of March. The railroads refused to grant the demands of the men in whole or in part, on the ground that they were financially unable to pay the wage increases. The engineers then took a strike vote by which 93 per cent of the men manifested their readiness to strike. At this crisis Judge Martin A. Knapp, head of the United States Commerce Court, and Charles P. Neill, United States Commissioner of Labor, intervened and urged that methods of peaceful mediation be tried before resorting to a strike. Their efforts resulted in securing the consent of Warren S. Stone, chief of the engineers, and J. C. Stuart, chairman of the Conference Committee of Managers, to consult with them. Proposals of mediation were rejected, but eventually both parties agreed to submit their differences to a board of arbitration.

To serve on this board the engineers selected P. H. Morrissey, former Grand Master of the Brotherhood of Railroad Trainmen; the railroads selected Daniel Willard, president of the Baltimore and Ohio Railroad. The Chief Justice of the Supreme Court appointed the five other members of the board. They were Oscar S. Straus of New York; Charles R. Van Hise, president of Wisconsin University; Albert Shaw, editor of the Review of Reviews; Frederick N. Judson of St. Louis; and Otto M. Eidlitz, former president of the Building Trades Association of New York.

After finishing these terms of the award the board extended its own jurisdiction and took up what it pleased to term the "broader aspects" of the problem. It pointed out a new phase of development, that is, the concerted action of the engineers upon the fifty-two roads of the Eastern Division, and called attention to the fact that there had never been a strike on all the roads in any district; colossal interests were involved; the convenience and interests of the public are of greater importance than any other issue; the commission emphasized the wealth and size of the district concerned, and the number of people living therein; all these interests would be affected by a strike among the railroad engineers to secure fairer wages.

Evidently the very elements, strength and solidarity, that made concerted action successful, are deemed just cause for restricting freedom of action among the engineers. It is only natural that the workingmen should recognize in the suggestion to eliminate the strike, a method of exploiting them.

Since the interests of the public are paramount to all other factors concerned in a railroad strike, it is therefore imperative, the report affirms, that some other way than the strike be found to settle differences between the railroads and their employes. The merits of the Erdman Act and the Canadian Industrial Disputes Act were considered, but declared inadequate. There is a better way, the commission decided. Railroads are subject to the Interstate Commerce Commission and various state commissions, but their employes are not. Since the board of arbitration considered this a disparity of status, it recommended the creation of federal and state wage commissions which shall exercise functions regarding workers engaged in work upon public utilities, analogous to those exercised with regard to capital by the public service commissions already in existence. The award concludes with this paragraph:

It is well understood by the board that the problem for which the above plan is a suggested solution is a complex and difficult one. The suggestion, however, grows out of a profound conviction that the food and clothing of our people, the industries and the general welfare of the nation can not be permitted to depend upon the policies and the dictates of any particular group of men, whether employers or employes, nor upon the determination of a group of employers and employes combined. The public utilities of the nation are of such fundamental importance to the whole people that their operation must not be interrupted, and means must be worked out which will guarantee this result.

The report was made by the five members of the board appointed by the government officials and accepted by the representatives of the railroads.

Mr. Morrissey, the representative of the engineers, dissented from the award of the board. He wrote an individual report in which he contends that the award of the board will have the effect of retarding the progress of arbitration in the settlement of industrial disputes in connection with railroads. The award, he asserted, does not settle the important principles raised by the engineers and can be only temporary because it is based upon statistics that not only were unreliable for the purposes for which the board used them, but also were wrongly applied. He dissents from the recommendation that wage commissions with power of compulsory arbitration be established, although such commissions might fittingly serve other functions. In view of that award just made Mr. Morrissey suggested that hereafter all arbitration boards shall be so constituted that no one group to the arbitration should have a majority of the board of arbitrators.

Mr. Morrissey's dissenting report concludes with this significant statement:

I wish to emphasize my dissent from the recommendation of the board which in its effect virtually means compulsory arbitration for the railroads and their employes. Regardless of any probable constitutional prohibitions which might operate against it being adopted, it is wholly impracticable. The progress toward the settlement of disputes between the railways and their employes without recourse to industrial warfare has been marked. There is nothing under present conditions to prevent its continuance. It will never be perfect, but even so it will be immeasurably better than it would be under conditions such as the board propose. The peace that would satisfy such an ideal condition as that had in mind by those making the recommendation, would be too dearly bought even if it could be attained. To insure the permanent industrial peace so much desired will require a broader statesmanship than that which would shackle the rights of a large group of our citizens.

To sum up; the principal labor conceptions enunciated by the board of arbitration for the eastern railroads and their engineers are: (1) There are three parties interested in every industrial dispute, the employers, the employes, and the public; the interests of the last are paramount: (2) A fair wage should be paid to employes. (3) Capital and labor should be subject to the same regulations; hence federal and state wage commissions with compulsory powers should be established. Organized labor takes issue with the first and the second principle stated.

The "public" has traveled a long journey since the old days when the railroad kings lightly ignored their claims to consideration with "the public be damned" or "there's nothing to arbitrate" with labor. It would appear that when this long suffering, just and impartial public gains the controlling voice in

the arbitration tribunals, it is quite willing to consign other people to the condition previously allotted the public. It is a wise policy that yields absolutely to no agents' control over liberty and justice. The great abstract something called the public is made up of individuals of fallible judgment, human impulses, with motives that may be selfish and acquisitive.

The five men who represented the public on this arbitration board regard labor (human) as a material essential to the satisfaction of public needs and desires, and of the same nature with capital, to be regulated and restricted in the same way and degree. In order that the public may be fed, clothed, served without intermission and inconvenience, labor (again we say human) shall lay aside any claim to what it may consider its rights and peacefully accept what others may deem good for it.

If this award, with its suggestions purporting to be in the interests of the general welfare, is an illustration of what the working people are to expect from compulsory arbitration, it is little to be wondered at that workingmen look upon the proposal with not only distrust but with aversion and antagonism.

An account by the Wall Street financial expert writer suggests that perhaps the motives back of compulsory arbitration are not altogether altruistic and humanitarian. It is in part:

The report of the arbitration commission is regarded by railroads as a distinct victory. The increase in wages is not a high price to pay for the weapon of defense fashioned and placed in their hands—the proposition to create Federal and State wage commissions with arbitrary powers to make and enforce terms of settlement of disputes.

Organized labor has seen and felt this danger and realizes that the report of the arbitration commission is an entering wedge to discussion and action on an issue it would like to delay or dodge. The issue is not a new one, but this is the first time the railroads have been able to get it before the law-making powers as an authorized expression of a body claiming to represent the public. The five outside commissioners felt a keen sense of the duty they owed the public in this investigation by refusing compensation for their five months of service on the board though they might as well have pocketed \$20,000 apiece. This action is added dignity and impressiveness to the finding.

The report of the wage commission is at once a club and a wedge, and organized labor identified with the utilities systems will be slow to give employers a chance to invoke popular sympathy and cooperation for suppression of violent methods.

This suspicion is further increased by the reflection that the great mass of individuals which make up all of the public has been willing to put up with coal strikes, street-car strikes, railroad strikes, strikes affecting all manner of industries upon which it depends for supplies, and has not passed compulsory arbitration laws to protect its own interests.



It is argued that the establishment of federal and state commissions for the regulation of wages will place "capital and labor on equality," which does not exist under the present interstate commerce provisions. On the surface, that may seem a fair conclusion; but in reality it leaves out of consideration the fundamental and inherent difference between labor and capital, the relative influence of each, and how deep-seated and dominant are the self-interest motives.

It is now accepted as fact that the bargaining power of the individual employe is far inferior to that of the employer.

Only by union of the individuals has the weaker element been made strong enough to deal with the employer on an equal footing.

Back of the worker's collective demands and propositions has always been the only argument of any persuasive influence upon employers—power.

This reserve power is the right to strike.

In the business world of today the conflict of interests is so intense, the struggle for profits so keen and so vital that any factor not able to defend itself by power or influence that can enforce compliance, need not anticipate a pleasant or a prolonged existence. If men of labor surrender their right to strike, they will be in the business world as guileless sheep among the grey wolves. Such an action would place them in the same category with sheep, not only from the defensive aspect, but also from the intellectual. Men are in business for profits. Hence, it is perfectly natural that employers should ever seek to entrench their own interests, and grudgingly diminish their share.

Of late years the merging of employers' interests, the trust organization, has made it necessary for the government to intervene for the protection of the public as consumers. It would be a far different matter for the government to intervene again, but in the interest of the employers. That such would be the result of this proposal to establish compulsory arbitration is acknowledged—even the Wall Street interpreter admits that the plan is a club and a wedge.

Once disarm the workers of their right to self-ownership, exploitation and some form of slavery will inevitably follow. Those who favor the plan claim that the awards of the arbitration tribunals will guarantee justice. This view is hopeful but not warranted.



Even the most ardent advocates of international arbitration accept certain matters as not justifiable. Any infringement upon those fundamental rights will be resisted by force by any nation. However much we may believe in the brotherhood of man and the compelling loftier influences of love, yet we do not abandon our police system. We know that men have nobler impulses and better selves; we know that these are increasingly asserting themselves; but we also know that removal of restraints upon the less worthy manifestations will not necessarily lead to the development of the higher. The strong arm of society lays hold upon those who offend. Men who when robbed of their cloaks, meekly yielded up their coats also, would be compelled to seek a tropical clime. Men who can not or will not reinforce their right to individual consideration or justice contribute to the development of non-social traits in others. Labor would not be justified in anticipating justice as a result of yielding up its power of self-protection.

But the advocates of compulsory arbitration claim, labor would be yielding no more by submitting to the awards of a wage commission than the railroads yield in submitting to the awards of the Interstate Commerce Commission. There is a seeming analogy which will not bear close examination. In accepting regulation determined by the Commission, the railroads reduce the dividends paid upon a capitalization that bears no relation to actual investments, but has been created by many curious and questionable devices. Such regulations compel the furnishing to the public of better and more impartial service and rates. To be sure, the "right" of the company "to manage its own business" is restricted, excessive charges and large dividends are somewhat limited; but those are matters that never existed as just rights. Nor were they more than external possessions of the company, for the owners, the managers, the officers, still retain their own physical personal liberty and freedom unimpaired. Should these wage commissions be established with compulsory power to fix wages and working conditions, to make their awards effective, penalties for violation must follow. When wages, hours or working conditions are decided, the workingmen must give of their own physical power for the stipulated allotment. If their sense of injustice be so aroused that they strike, they will be fined or sent to jail, or both. Freedom of choice, personal liberty, is gone. These awards are dealing with matters inseparable from

the living pulsating human being. Compulsory arbitration is but another form of industrial bondage.

This supposes decisions in favor of the employers and not impartial awards, the advocates object. But is any other hypothesis probable? These compulsory arbitration commissions would be composed of representatives of the three parties—employers, employes, and the public. The employers are men of influence in the political, industrial, and financial circles. Their connections, their inside knowledge, give their opinions and demands a potential force that may be only a subtle, psychological influence or of a less refined nature. There is a prestige accorded to men who have places of control that secures for them consideration.

Then, too, with compulsory arbitration, the fact that all the great instrumentalities and channels of communication are under the control of the employing interests, would still further emphasize the disparity in influence between the employers and the workers. The employers own the great public press and control their policy; control the telegraphs, the telephones, and the cables; control the gathering of information, its preparation, and editing, and thereby control the statement of facts, and the presentation of conditions and causes actuating motives. By this power the press determines what the public shall know and what conclusions it shall deduce. With this condition of affairs, how are the toilers to get their side of the story presented to the public; how are they to tell the world the injustice and grievances that should be changed, if humanity is to be accorded an equal chance?

Where, indeed, is protection accorded to workers equal to that accorded employers?

Labor shorn of its power would be a great inert, spineless mass, as likely to inspire respect and consideration as a jelly-fish.

The third party, the public, is interested from the consumers' standpoint, and hence, regarded as an impartial judge of the employers' and employes' claims. This third party, the consumers, is not always the absolute and unerring arbitrator depicted. It is chiefly interested in having its wants satisfied, its conveniences served; although it may intellectually recognize wrongs and grant that they should be corrected, practical and financial influences will not infrequently overrule such convictions in favor of the apparently easiest solution of the dif-

ficulty even if the results are but temporary, which means victory for the stronger. Such was the experience of the laundry workers of New York. Even though harrowing and revolting details connected with the cleansing of the city's dirty linen were vividly and specifically revealed to the public, the conscience of this impartial arbitrator remained dormant. The public failed to rise to expected heights.

After all, is the public disinterested? Do we not rather find it composed of different groups, some whose interests are similar to those of the employers involved, and who hence naturally sympathize with them and their position? There are many whose financial welfare is identical with that of the employer, who are dependent upon his prosperity. There are many whose industrial experience as workmen would inevitably predispose them to approve the actions and demands of the employes upon any question. There are many selfish and indifferent to the moral and ethical values of any issue that conflicts with their own comfort. There are some few with broader sympathies and keener and deeper understanding of human nature, who try to maintain the dispassionate attitude of justice toward both, but upon some critical and vital issue can they completely overcome the formative, determining influences of environment, instruction, and the indefinable psychic influences of their own kind? It is a serious and dangerous matter to entrust the determination of issues which concern the life, the happiness, the welfare, and freedom of the workers into the hands of other men who do not and can not know the toilers' world in which they live, move, and have their being.

Government regulation has two classes of advocates; one hopes thereby to insure the welfare of the people, the other hopes to insure his own continuity of control. It is often hard for the average man to discern the first from the second, and frequently seekers for the commonweal are deluded into following false leaders and trying a remedy that is worse than the disease.

Government regulation is a remedy frequently suggested for all manner of political, social and economic evils, resulting from modern industrial chicanery and incompetency. It is not in itself a universal good or evil; its application, or otherwise, must be determined by the individual character of the principles involved in the situation.

If the compulsory element is introduced and government machinery is invoked in determining industrial disputes, then it devolves upon the government to enforce any and all awards that thus become the law of the land, in order to protect the government from contempt. Should the employer object to the decision and award he may go out of business, which may involve financial loss, or he may enter upon another business career; or if he violates the terms of the award, he can be held financially liable. But should the employe feel that an award and decision have been ever so grossly unfair and unjust, what recourse is open to them? To accept the award and sullenly work as slaves under conditions which are not only onerous to them, but enforced by all the powers of government? Or rebel and go on "illegal strike"? In the latter event, they may be all arrested, tried, and sentenced to fines or imprisonment. But supposing fines, how collect them? In lieu of means or willingness to pay fines, several thousands may be sent to jail. But how, all at one time, or in relay squads?

Decisions can not be enforced in the face of the united and determined resistance of the people to tyranny, and in defense of freedom. You can not stop strikes by law; you can not, at least in the United States in this year of grace, enforce involuntary servitude upon unconvicted American citizen workmen. Even if strikes could be made illegal, there would be no guarantee of industrial peace. A strike is not an aggressive act, it is not an affirmative act, it is negative. It is expressed by non-resistance. It is the state of doing nothing. It is expressed by men folding their arms or holding them to their sides, a refusal to expend their physical and mental powers in service for another. And so long as freedom in its faintest concept shall obtain in our country, so long as workmen, citizens of the United States, may claim the rights and the guarantees of the Constitution of the United States and of the several States, they can not by law be forced to expend their labor power, which is part of their very life and being, in the service of another.

The enactment of compulsory arbitration is no remedy for strikes. This fact is proven wherever the effort has been made. All agree that strikes should be avoided wherever possible, and every honorable effort made to avert them. But the very best evidence is afforded by the board of arbitration's award in the case under consideration, that strikes are more generally

avoided and brought to a minimum in number when the workers are organized, capable of ascertaining and maintaining their rights, with the power and the right to strike, and yet submitting their cause as they submitted this case to an arbitration board, the majority of whom were predisposed against them.

Even though the award in regard to wages, hours, and conditions of employment is not entirely satisfactory, it has been accepted, and will be complied with by the men and the organization affected. But, as Mr. Morrissey, a member of the board, points out, the terms are unjust, inapplicable and can not in any way be regarded as at all permanent. But be that as it may, the board of arbitrators in this case could well have afforded to have allowed its award upon the conditions of labor to stand, without traveling far beyond the purpose for which it was called into existence and entering into a realm dangerously trespassing upon the rights of man and guaranteed American citizenship.

Would a compulsory arbitration law, with its provisions enforced by the government, prove a deterrent to strikes? We think not. But even if it did, such a law would only repress the feeling of anger and resentment at unjust decisions until the repressed current would burst through all control, sweeping everything before it in the revulsion of feeling. The pages of the French Revolution afford example after example of cumulative revulsion resulting from tyranny and repression. As the *OUTLOOK* truly observes: "Compulsory arbitration would promote rather than prevent labor wars, unless it can be so framed as to secure the consent of the trainmen,"—which is to say must be voluntary instead of compulsory.

As already stated, strikes should be avoided whenever possible, but is a strike essentially an evil? As Dr. Lyman Abbott said, in discussing international arbitration treaties:

What we should be especially interested in, is not that this be a movement for peace, but that it be a movement for justice. Peace has its tragedies, no less than war.

What the right of resistance to injustice is in the political world, the right to strike, to cease work, is in the industrial.

A reserve power held in abeyance to be used only in the interests of justice when all other means have failed.

The right to strike must be retained if the working men would retain the position of free men.

A strike, like any other power, is not to be used flippantly.



It has been one of the most effective means with which the workers have fought their way to higher elevations. Workers have ever been the oppressed class, but slowly, steadily, they have forged their way upward from slavery to serfdom, from serfdom to freedom. Then as freemen they have fought to maintain the right to strike, to dispose of their working power as they deem best, to associate themselves together to promote their general welfare. Now come vested interests seeking again to reduce the workers to a condition in which they may be more readily exploited. The danger threatens in the form of governmental intervention and regulation of industrial relations through judicial machinery, and the jails. In the interests of industrial continuity, the workers may not cease work when they please.

The toilers are to lose their defensive weapon. The Government directs that they shall unfold their arms, and forces them to work. The workers are to return to the condition which prevailed under the old medieval conspiracy laws, when men were jailed, branded, or hanged on the charge that they had "robbed their employers of their labor." Strikes are to be made illegal.

Must it come that to regain freedom from slavery the workers must fight the Government? That for the purpose of preventing strikes and maintaining industry undisturbed, compulsory arbitration must set unconstitutional limitations on the freedom of the great masses of the people? However much we may regret the economic loss, suffering and inconvenience attending strikes, there is involved that which is of greater moment. What should be the object of our endeavors is not a cure, not a palliative, not merely something that will stop industrial warfare and economic loss, but to understand and remedy the underlying conditions that result in injustice so that our changes may be really constructive. Industrial warfare will cease when the grievances of, the wrongs and injustice to the toilers no longer exist. Then the worker shall still remain a free man, retain his weapon of defense, cumbersome though it be.

"The crucial boundary line, the border between industry and democracy," does indeed need more light, more fair, open investigation and discussion, not the compulsory awards and decisions that would result from substituting Government regulation, control and enforcement for voluntary action concerning personal relations on the part of free citizens.



How the principle operates in practice, gives a line on its actual value, and reveals whether the results promised are secured,—that is: Are there no strikes? Is industrial progress uninterrupted? Has the industrial problem been solved and are the interests of labor and capital co-ordinated so that an era of good feeling and industrial peace is maintained? Have social justice and democracy been realized? Can law prevent strikes? Can compulsory arbitration affect industrial changes that will result in setting up machinery that will insure the employes a fair share of the product of their toil? The most extensive laboratories for experimentation in these questions are in Australasia, Canada and British South Africa.

For the first twelve years after the adoption of compulsory arbitration in Australasia its advocates had many reasons for satisfaction. The grievances and the wrongs of the men were so obvious that no court could refuse them awards, so the workers were satisfied. As the adoption of the law coincided with the period of prosperity the employers did not seriously object to increased wages.

The high tariff wall gave the employers additional protection. Their profits were further insured by the tendency towards standardization of production costs. Australia and New Zealand were usually spoken of as a working man's paradise, the land of no strikes.

Beginning with 1901 dissatisfaction developed among the workers. This culminated in a long series of strikes beginning in 1906, when a strike occurred on the tramways in Auckland; in 1907 there was a large strike among the slaughtermen; in 1908 the coal miners went out. The same year, the motormen and conductors in Auckland struck and the bakers of Wellington. The labor report for New Zealand for 1908 showed twenty-three strikes affecting 2,389 men, and since then strikes have increased in number and in scope.

In February, 1907, the slaughterers demanded an increase in wages. The packers refused to grant this and referred the question to the arbitration court. Knowing that the court would consume the most valuable time of the season in reaching a decision, which in the end would probably be unfavorable, the men struck illegally. The four principal centers of the packing business were tied up. This desperate situation forced the employers to grant the increase. The court was in a dilemma for "the law must be upheld." They arrested the slaughterers and

fined them \$25 each. It was a long and tedious process. Men were numerous and hard to identify. Those brought in were searched but the \$25 were not forthcoming. The wheels of justice ground slowly; when summer was ended, many unfined slaughterers had vanished. The law had been defied with impunity; it was important to prevent the strike and could not enforce the penalty for striking.

The necessity of enforcing the law prompted the Government to increase the penalties for its violation. In the future any one who struck while a case was pending might be fined and in lieu of the fine his goods confiscated or the man himself imprisoned. Any labor union ordering a strike or permitting its members to strike, must pay a fine. Then, lest the unions evade the law by withdrawing their registration, the fine for striking was extended to all trades supplying a utility or necessity, whether the trades were organized or not.

Strikes among the slaughtermen have been especially numerous in New Zealand, and for that reason are counted separately in the labor reports. In the year 1908-1909, penalties were inflicted on workmen in 266 cases; the fines aggregating \$6,650, of which, at the end of six months, 58½ percent remained unpaid.

In 1908, after having presented their grievances again and again, and receiving no answer except the dismissal of the men making the complaints, the miners struck. Preparatory to action they divided their union funds among the individual members to prevent their being levied on for fines. The employers invoked the new law. The household goods of the men were seized; cook stoves, sewing machines and furniture, including articles owned by wives before marriage. The goods must be sold at public auction,—but buyers there were none. Finally a smiling man offered \$1.25 for the whole lot—and got it. Before night the miners' goods had been returned to the miners' homes. Thus it was again plain the law could be defied with impunity. Enforcement of law depends on popular sentiment or concept of justice.

Mere enactment of legislation is no remedy. Compulsion can not be extended beyond certain limits.

In West Australia there were many "unlawful" strikes and lockouts, but as a rule no attempt to enforce the prohibiting clause. The act broke down completely in 1907 in the saw-milling industry. Three thousand men were affected, but there was no attempt to enforce the unpalatable award.

In a mass meeting of the employes of Broken Hill Mine of New South Wales on October 18, 1908, the chairman declared: "The idea of the new political union is to get an agreement and register. The bona fide unions in the Broken Hill Mine would have no voice in it. These irresponsibles would have the agreement made a general law. A strike is our only remedy. Wade's act says we shall go to jail if we strike, but no government on earth would put the 6,000 men on the line of load in the Barriers in jail."

This chairman definitely voices the conviction that has been growing among the men, that the compulsory law was a political move and that the labor men had never controlled the political situation. As a result, the workingmen had come to feel that they had no part in the system and that whatever had been given them was only given to hold them in line quiescent that industry might be uninterrupted, but that freedom of action, the birthright of all free men, was yet far from their reach, tied up by absolute governmental control.

The exploited can not cherish good will towards those who use governmental control for their hurt. Compulsory arbitration did not emanate from the workers, but from the rural public which was the controlling political force. They had always assumed a savage attitude towards strikers and made frequent use of the militia against them. The militia used in strikes was told to aim to "lay the strikers out." The police of Australia have used against strikers a most brutal method, found no place else, known as "frog marching." The arrested striker is seized by the feet by two policemen, then he is inverted and held with his head so close to the ground that he is forced to protect it as best he can by using his hands as feet, as he is escorted in that position to the jail.

Many investigators have tried to determine the value of Australian industrial legislation. Some of their opinions are as follows:

Paul Kellogg says:

But it is not through fear of fine and certainly not through the martyrdom of imprisonment that men and women are to be lead to agree with their masters. The new act will continue to succeed as a prevention of strikes in spite of its strike prevention clauses rather than because of them.

Sidney Low in the April Fortnightly concludes:

It would be rash to affirm that the Australian precedent has been sufficiently successful to call for hasty imitations by other and more complex communities.

Hugh H. Lusk, a most ardent advocate of the system, says:

However anxiously I have looked around for some way in which the system of New Zealand could be applied here (The United States), I have been met by difficulties that seemed to me insuperable.

When the law of 1901 expired, New South Wales enacted the law of 1908 which practically abandoned compulsory arbitration. Wage boards were provided for the more important groups of industry. There was a clause enabling unorganized labor to appeal to the Wage Board for relief, but no such appeal has ever been made. Strikes and lockouts were made illegal under certain conditions only. Though a penal clause of the law was strengthened, it has not prevented large bodies of men from striking.

In 1902, 12,000 coal miners went on strike; 1,000 men were idle in other industries as a result. Then in December Parliament passed a coercive act giving the police power to break up any meeting for strike purposes, making the procedure more effective and increasing the severity of the penalties. In December, 1910, the government secured the conviction of the president of the Colliers Employees' Association, sentencing him to one year at hard labor in prison. Three other leaders were given sentences of eight months, and others shorter terms.

A short time ago a published interview with J. S. Badger, an American who has been living in Brisbane for sixteen years, indicated that compulsory arbitration had not resulted in the kind of feeling between employers and employes necessary to industrial peace, but rather alienation was increasing. He said:

The question of getting labor and dealing with it, is a very serious one in Australia. The country has, perhaps, led in labor legislation, and all disputes between employers and employes are subject to arbitration. There is a Federal Arbitration Board, and in each State there are arbitration courts, or wage boards for each separate industry. These last have an equal membership of employers and employes, with an independent chairman, and they settle all details about maximum hours and minimum wages. Their decisions, when approved by a minister, and gazetted, have the force of laws, and severe penalties are provided for their infraction. These laws are enforced rigidly against the employer, but it has been found very difficult to enforce them against the employes. The whole history of this legislation has shown that you can readily get an employer, and fine him, or worse, but if a large number of employes are dissatisfied, and decide to stop work, there is no way of making them take up their tools again. If you haul them up, they snap their fingers. If 10,000 men decide they won't work, it would be a little more than the government could do to lock up the whole lot or attempt to fine them.

It will be remembered that in Brisbane, the "Country without Strikes," of which the late Henry D. Lloyd wrote, a general strike, completely paralyzed all industry and commerce last

spring. The causes of the strike were the refusal of the management to grant permission to street railway employes to wear the metal badge of their union while at work, and the long delay in bringing the matter before the Arbitration Court. When finally the men did win a favorable decision from the Arbitration Court, the employers appealed the case to the High Court.

Compulsory arbitration can not guarantee industrial peace. If arbitration is followed by more harmonious conditions, it must be arbitration sanctioned by the employes; that is to say, voluntary arbitration. Where there has been organization of the workers, voluntary arbitration has become the prevailing custom in American industry. Why should we change to a method that has not secured as satisfactory results, where tried?

In the light of such experience with compulsory arbitration organized labor is justified in objecting to having any such legislation foisted upon it under the pretence and euphonious name of peace. Labor seeks justice, and peace will naturally follow,—peace is a result, not a casual element. Labor deprecates all such suggestions introduced in the name of social welfare, but really serving as an entering wedge whereby the people may be beguiled into adopting a regulation prejudicial to the best interests of a great proportion of the population—the workers. Labor will oppose compulsory arbitration under any guise.

## RAILROAD CONTROL<sup>1</sup>

These arbitration boards, whether in Australia, or in New Zealand, or where not, all operate upon the same general principle; that is, a board of conciliation or arbitration is selected composed of representatives from both sides. In this bill it is called the board of wages and working conditions. The findings of this board go to some real tribunal named by the government, whose determination has the force and effect of law.

It is not necessary to examine the precedents. A look into the working of the thing will convince any careful analyst of its inevitable result. Here are the representatives of the craft and the representatives of the employer endeavoring to reach a satisfactory wage. As long as the traffic will bear it, whether it has been among railroads or in private industrial institutions,

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<sup>1</sup> Speech of Hon. A. Owsley Stanley, of Kentucky, in the Senate of the United States, Monday, December 15, and Tuesday, December 16, 1919.



the result has been to raise the wage. It does not matter whether men are mining coal or spinning cotton or operating a railroad, as a rule they are always willing to stand a raise in wages, provided that raise shall apply to all who are engaged in the industry in the country, and let the ultimate consumer absorb it.

In addition to that, as I called to the attention of the Senate yesterday, this is compulsory arbitration. The man is commanded to work, not because the conditions are suitable or the compensation satisfactory, but because the law commands it, and you can not in fairness compel a man to work without affording him a compensatory wage. For that reason a minimum wage has already accompanied a compulsory arbitrament of the question.

In a report made by the Board of wages and working conditions under conciliation and arbitration acts of Australia and New Zealand, Mr. Aves to the Right Hon. H. J. Gladstone, in 1908, after a thorough review of this system in both countries, he says:

But the real conditions of industry are very far from being determined simply by the wages that have been paid, and if laid bare I think the attendant conditions, when coupled with the increasing inefficiency, lack of interest in work, and trade-union intervention, would be found to be a greater cause of discontent and dissatisfaction among employees than the nominal wages fixed.

Another distinguished author has said:

I am quite sure that the arbitration system has resulted in the loss of industrial efficiency far greater than ever resulted from strikes.

A thorough and exhaustive report on the working of compulsory and conciliatory and arbitration laws was made by the royal commission, a commission that visited all the countries in which these boards were in operation, and made anything but an unfavorable report. I call the attention of the Senate, however, to this pertinent paragraph, the thing that seems to have been overlooked by those who are studying simply its effect upon the employer and the employee and overlooking the rights and interest of the general public.

They said:

The effect of the working of the act—

As far as the general public is concerned, and that is the thing in which we are principally interested here—

has been undoubtedly to make the public to pay generally more for the products of an industry which has been regulated by a board or the



court, when the tariff is high enough or other conditions occur to prevent foreign competition. I have already pointed out that, in the boot trade, the conditions imposed are such that outside producers are able to leap the tariffs fence, and a Member of the House of Representatives said to me: "If the present duties are done away with the act may as well be repealed as far as raising wages in the manufacturing industries is concerned." The coal-mine owners agreed upon an advance in price when the cost of hewing was raised, and the flour millers acted similarly. Building has become more expensive, and in this trade the contractors at first made very little opposition to the claims for advance in wages, secure as they considered themselves in the ability to pass on the extra cost of construction to those who required their services. Now, however—

And this should give us pause at this time—

they are of opinion that the tendency of the awards is likely to narrow the scope of their business, and they are making efforts to oppose more effectually the demands of the men. Cost of living, particularly rent, is becoming dearer, I was informed.

The inevitable result of allowing the employer and the employee to agree on the wage, and then authorizing the government to give that agreement the force and effect of law, the public unconsidered and unrepresented, is to arbitrarily raise wages. Australia and New Zealand abandoned every semblance of free trade, closed their ports, when they went to this pernicious policy, and kited wages so high that they were only stopped when the cost of living became acute.

Are we prepared at this time to adopt a policy whose friends admit results in inefficiency among the laborers and increased cost of the product of labor?

In my opinion the fear that haunts the minds of members of the Senate and of members of the committee and has induced them to adopt this dangerous expedient, the fear that there will be a universal dislocation of transportation business in the United States, a universal paralysis of the whole movement of commerce from ocean to ocean, is unwarranted. It never occurred before and we have no reason to apprehend that it will occur in the future.

A strike, especially among the employees of common carriers, among engineers and firemen and conductors, is a dernier resort to which they never come except after long negotiations and a failure to reach any kind of agreement. These strikes, these disagreements, are the result of the failure of the employees to concur or to agree in some arrangement with their employer. Is it possible that when you have turned the roads back to not less than 20 nor more than 35 separate and distinct corporations, that each one and all of the corporations will have the same trouble at the same time? If they are local, if the

walkout occurs upon one road and not upon the other, then you are not face to face with the evil and need no new legislation to handle it, and there is no reason to apprehend that it will be universal in the future any more than it has been in the past.

Now, let us suppose the thing should occur. Let us suppose that 2,000,000 men should at the same time and by common agreement all quit their work at the stroke of the clock. Remember the bill, as the chairman of the committee has said, is not like the injunction at Indianapolis. It is not directed against a half a dozen labor leaders. It applies to all, says the chairman, and that is true. It is a fundamental principle of the law of conspiracy that where a number of men agree to do an illegal thing it does not matter about the extent to which each participates in the enterprise, they are all equally guilty.

If 100 men agree to commit a robbery and ninety-five out of the 100 act as mere pickets, all are guilty. The same applies here. If they all agree to walk out you have 2,000,000 men who have violated an act of Congress. What are you going to do with them—put them all in jail? In 1910 the prisons of the United States accommodated a little over 111,000 men. You would have to put twenty men in each cell, if you had deputy marshals enough and soldiers enough and civil officers enough to apprehend and incarcerate 2,000,000 men. When you did, when the last railroader was in prison, who would run your railroads? If you could go and find new men to run the roads after imprisoning these men, would it not be easier to find them before you imprison them?

You know and I know and the employees upon the railroads know that the law can not in the nature of things be enforced. The only reason for passing it is the frail hope that it will never have to be executed.

That it will never be violated. The laws of the Supreme Judge, from whose decrees there is no appeal and from whose punishment and vengeance there is no escape, are violated, the children of Israel violated them before the thunders of His wrath had ceased to reverberate about Sinai's flaming top. No law has ever been written yet by God or man that has not been violated, and yet we are told that while we know this act is impotent, while we know it can not be enforced, we believe the moral effect, the sanction of it, will be such that the men will obey it, although they have told you that they will not.

The act not only never prevented a strike and never will, but

the history of it in every country that has ever tried it shows that it is the most provocative thing of strikes and dislocations and revolts among labor that has ever been conceived by the wit of man. I know of nothing more interesting than the funeral orations which were delivered over the act in the New Zealand Parliament after ten years of trial and the admission of utter failure, of failure so ludicrous and pathetic as to amount to a legislative and judicial fiasco and a farce.

In discussing the failure of an act which the chairman of the committee says in all respect is like this, that in every essential resembles it, this act is a twin of the dead New Zealand experience. Said Mr. Rigg, a member of the Australian Parliament, on July 1, 1908:

I have said it was a mistake to suppose that strikes could be prevented by coercive legislation; yet this is what we attempted (p. 48). Now, sir, I have already said that we committed a great error when we made that change. What has been the result? We have found that we have put a law on the statute book that we have been unable to enforce, and no one seems capable of suggesting any effective and proper means of enforcing it. Let me remind the honorable gentlemen that threats of imprisonment were used to compel the payment of fines under the act; that, in fact, writs of attachment were issued against strikers which entailed imprisonment if they had not been respected. Again, we know that where there is an extensive strike, and especially where the strikers are assisted and mutually supported by other unions, it is impossible to enforce the law by imprisonment—quite impossible. Without considering the obvious difficulty of accommodating as prisoners a very large number of our fellow citizens, to enforce it would be to deprive employers during the term of imprisonment of the very labor they can not do without and thus to prolong all the evils that arise from the strike itself.

This brings me to the next method of enforcing the law, which is by fine, and I ask, is it possible to recover the fine? I say no.

This man is speaking from ten years' experience with the operation of the act under his own eyes.

We have had recently, first, a union distributing the funds in order that they might not be attached, and then we have had the case where the goods of the strikers have been distrained, a number of articles seized, and, when put up to auction, bought in for 12s. 6d. by an interested party and returned to the owners. Now we are adopting another method, which is the attachment of wages over and above the sum of £2 a week. Now, without expressing any opinion as to the legality of such a course, let me ask: Supposing the attachment of wages results in the men refusing to work any longer, how are you going to enforce the payment of the fine? Have you not then reproduced the conditions that existed during the strike? The strikers who have been fined say, "So long as our wages are attached by the court we will not work," and that means of recovering the fine is destroyed.

I call the attention of the Senate to another brief and graphic description of the expiring agonies of the same act in the first country that ever tried it. I quote here from the Federationist:

For the first twelve years after the adoption of compulsory arbitration in Australasia its advocates had many reasons for satisfaction. The grievances and the wrongs of the men were so obvious that no court

could refuse them awards, so the workers were satisfied. As the adoption of the law coincided with the period of prosperity the employers did not seriously object to increased wages.

As long as you agree to boost wages it works. Have you any need of law on a rising scale? Are wages rising fast enough in this country to suit you, or do you want to put this thing in under them and give them another shove upward?

The high tariff wall—

That is another thing that is necessary as well as the minimum wage scale. You can not operate this proposition without excluding labor, that is governed by the law of supply and demand, and not by boards and commissions. Wages should rise according to a natural demand and not according to the maneuvers of boards and commissions, to the detriment of the general public.

Beginning with 1901, however, dissatisfaction developed among the workers. This culminated in a long series of strikes, beginning in 1906, when a strike occurred on the tramways in Auckland. In 1907 there was a large strike among the slaughtermen. In 1908 the coal miners went out—

All in the teeth of this law.

The same year the motormen and the conductors in Auckland struck, and the bakers of Wellington. The labor report for New Zealand for 1908 showed 23 strikes, affecting 2,389 men, and since then strikes have increased in number and in scope.

In February, 1907, the slaughterers demanded an increase in wages. The packers refused to grant this and referred the question to the arbitration court. Knowing that the court would consume the most valuable time of the season in reaching a decision, which in the end would probably be unfavorable, the men struck illegally. The four principal centers of the packing business were tied up. This desperate situation forced the employers to grant the increase. The court was in a dilemma, for "the law must be upheld." They arrested the slaughterers and fined them \$25 each. It was a long and tedious process. Men were numerous and hard to identify. Those brought in were searched, but the \$25 was not forthcoming. The wheels of justice ground slowly; when summer ended many unfined slaughterers had vanished. The law had been defied with impunity; it was impotent to prevent the strike and could not enforce the penalty for striking.

The necessity of enforcing the law prompted the Government to increase the penalties for its violation. In the future anyone who struck while a case was pending might be fined, and in lieu of the fine his goods confiscated or the man himself imprisoned. Any labor union ordering a strike, or permitting its members to strike must pay a fine. Then, lest the unions evade the law by withdrawing their registration, the fine for striking was extended to all trades supplying a utility or necessity whether the trades were organized or not.

Strikes among the slaughtermen have been especially numerous in New Zealand, and for that reason are counted separately in the labor reports. In the year 1908-9 penalties were inflicted on workmen in 266 cases, the fines aggregating \$6,650, of which, at the end of six months, 58½ per cent. remained unpaid.

In 1908, after having presented their grievances again and again and receiving no answer except the dismissal of the men making the complaints, miners struck. Preparatory to action they divided their union

funds among the individual members to prevent their being levied on for fines. The employers invoked the new law. The household goods of the men were seized—cook stoves, sewing machines, and furniture, including articles owned by wives before marriage. The goods must be sold at public auction, but buyers there were none. Finally a smiling man offered \$1.25 for the whole lot, and got it. Before night the miners' goods had been returned to the miners' homes. Thus it was again plain the law could be defied with impunity. Enforcement of law depends on popular sentiment or concept of justice.

Mere enactment of legislation is no remedy. Compulsion can not be extended beyond certain limits.

The law referred to, it will be understood, was perfectly fair; that is, it was ambidextrous; it applied to both sides. The law provided heavy pains and penalties against the employer who did not raise wages on demand. The boot and shoe makers of New Zealand refused to obey an award of the commission; at least they closed their shops and boots and shoes were imported. Then the workmen turned on the law.

J. Stephen Jeans, late secretary of the Iron and Steel Institute, in a comprehensive review of the whole question, has this to say about compulsory arbitration:

Practically, however, all experience and precedents up to the present time are dead against compulsion in any form. You cannot very well compel a man to agree to submit to reference whether he shall be required to work for a certain employer for a certain wage at a certain time. This must be left entirely to the man's own choice. Nor can you deal differently with a body of men, however numerous, so long as they have broken no laws and rendered themselves amenable to no penalties. Workmen must be continued in the enjoyment of the right to dispose of their labor at whatsoever price they like, and this being so they can not be compelled to arbitrate as to what the price of that labor shall be or to any other general condition affecting its value and duration.

In my humble opinion, you are attempting to incorporate into this act a foolish and indefensible expedient highly offensive to labor, utterly useless to capital, and eminently calculated to produce the very evils it is designed to correct. Such legislation has often produced strikes by the wholesale. It has never settled one, it has never prevented one, and it never will.

Prof. John R. Commons, of the University of Wisconsin, and Prof. John B. Andrews, authorities of national repute, have written an exhaustive work upon this subject, entitled "Principles of Labor Legislation." With no political bias, without the question being agitated, speaking not as advocates but friendly to many provisions of the law, they review with pertinent comments the history of compulsory arbitration in Australia. They say:

■ ■ ■ Turn now to the turbulent history of New South Wales.  
 ■ ■ ■ This one State furnishes more than half of the days lost by



strikes in all of Australia. ■ \* \* After a futile voluntary arbitration law of 1892, New South Wales passed its first compulsory law in 1901. ■ \* \* The act expired in 1908. The single court had not disposed of the cases brought before it with sufficient rapidity. The anti-labor ministry in power at that time adopted a comprehensive system of wage boards modeled after the Victorian system, whose determinations were subject to appeal to a special court of arbitration—

The exact provision which is contained in this proposed legislation—

All strikes were declared illegal. A system of fines was adopted to reach the union funds. Strikes, almost of the character of rebellion, followed and the next year the same ministry rushed through a bill applicable to strikes in certain necessary industries, like coal mining. These provided a penalty of not exceeding 12 months' imprisonment for instigating strikes, and the same length of time for mere participation in a strike meeting—

What was the effect of that on the coal-mining industry?

Immediately there followed a strike of all the coal miners in New South Wales—

They accepted the challenge instantly—

The situation became intolerable, and the Labor Party came back to power. A new act was passed in 1912. The severe penalties were withdrawn, and special conciliation boards were created for mine workers.

But neither under antilabor ministries nor under the present labor ministry is New South Wales industrially quiet. Frantic assertion of authority has been followed by flabbiness in the administration of the law. This has resulted in a series of headless strikes. The officials of the union, who might be prosecuted, make a show of dissuading the men—

Have we not had a similar experience recently in Indiana?—

and the men strike with neither political nor economic consequences, as the Government will not prosecute the rank and file, and the employer is bound by the awards. Practically the compulsory arbitration system of New South Wales has become an imperfect wage-board system.

The act of New South Wales was repealed. A provision was placed in the law of 1912 mildly reprobating strikes and in certain instances punishing them as a misdemeanor, and again the laborers struck.

The mild act of 1912 was not anything like as obnoxious as the previous one. Under it a strike or lockout was regarded not as criminal but rather as an extravagant expedient, liable to penalization extending to a charge on any moneys then or thereafter due to the person ordered to pay such penalty. The court was also authorized to grant a writ of injunction to restrain any person from continuing to instigate or to aid in a lockout or strike, the maximum penalty being imprisonment for six months.

In protest against and in defiance of this act, in a country



containing less than 1,000,000 adult males, there followed in one year 289 dislocations, involving 144,704 men, and entailing the appalling loss of 2,861,595 working days, with the result that the objectionable provision was repealed in the following year by an amendment establishing the principle that strikes and lockouts, with certain exceptions, were expressly recognized as lawful.

Every country that has ever attempted to enact such a law as we are now attempting to enact has precipitated strikes, with the result that the law has been repealed and the right of laborers to quit the employment and personal service of any man or corporation without let or hindrance has been expressly recognized. Canada has done so; New Zealand has done so; New South Wales has done so; England has done so; and yet, in the teeth of these multitudinous failures everywhere in the civilized world wherever the attempt has been made, conservative men at this crucial time, at this perilous time, are endeavoring to revive this indefensible experiment.

Great Britain and Canada alike, admitting the impotency and folly of such provisions as this, have incorporated into the law express provisions recognizing the right of men to quit and guaranteeing immunity to employees who individually or collectively protest against objectionable working conditions by a refusal to longer endure them.

After more than ten centuries of experience with every character of legislation penalizing combinations among employees or any character of interference in the relations of master and servant, employer and employee alike, in Great Britain have joined in the utter repudiation of the whole scheme of compulsory arbitration.

As I said on yesterday, we have had for 2,000 years experience with legislation similar to this. Senators will remember from the reading of Blackstone that it was a fixed principle of English law for five centuries that any combination among workmen for the purpose of extorting an increased wage or otherwise inconveniencing an employer was illegal; that any interference between a man and master was a misdemeanor or worse.

Very recently this whole question has been subjected to

the most exhaustive inquiry by the Whitley Commission. In commenting upon the report of this commission, Mr. Joseph Horton, British correspondent to the Iron Trade Review, of August 1, 1918 thus summarizes the result of the findings of this commission.

These are not the protests of labor; these are the cold and deliberate judgments of capitalists and of employers of workmen. I quote from the Iron Trade Review of August 1, 1918:

Should employers and employees be compelled to submit their disagreements to arbitration? Should employees be compelled to remain at work while disagreements are being arbitrated? These were among the big questions studied by the commission appointed to investigate industrial unrest in Great Britain. In the latest report of the commission both questions are answered in the negative. The Whitley investigation commission, as the board is called, found that neither employer nor employee favored compulsory arbitration.

In this the second article written by the Iron Trade Review's British correspondent dealing with the British labor problem, the commission's reasons for its findings are set forth. It is pointed out that the mainstay of British industrial peace is the frank discussion of problems between employers and employees, and voluntary arbitration in all cases where such discussion fails to bring about the desired results.

The commission is strong in its advocacy of industrial councils in the various industries as a reliable means of arriving at a satisfactory understanding. The success of the voluntary arbitration plan has been founded on the confidence of both employers and employees in their arbitrators.

If it is not possible to enforce such an act in little islands, in thinly populated countries, how will it be possible to enforce such an act in this great country? The male adult population of New South Wales and of New Zealand does not equal the number of men now in the service of our railroads. There are not 600,000 adult, able-bodied workmen in either New South Wales or in New Zealand. There are more men in the employ of the common carriers of the United States than there are men, women, and children in either one of these countries; and yet these little, thinly populated countries could not enforce such an act on account of the number of men it affected. What are you going to do with 2,000,000 of men?

Mr. President, I have followed this committee and its great work with interest and with admiration. Its members have brought learning, experience, patience, and courage to the solving of an immense problem and to the performance of a titanic task. You have revolutionized a great industry in America. You have taken these roads from the control

of the state governments and placed them under federal control. You have supervised and controlled the issuance of their securities, the payment of their rates, the organization of the corporations.

If we must make this attempt, let it be done in another bill and at another time. This all-important and vital legislation should not be shackled, should not be endangered by this provision, requested neither by master nor by servant, and sternly, and I think wisely, opposed by millions of men directly affected by it. This bill contains many things which are wise and good and more which are untried and new.

We are about to reorganize and revolutionize a system of transportation which equals in extent and value the mileage of all other railroads on the globe; we have provided for the reorganization of the corporations which have hitherto controlled and operated these systems; we have transferred them from the jurisdictions of the state to the federal government; we have regulated their earnings and the issue of their securities. The industrial peace and prosperity of this Republic rests in great measure upon the success and the great work this committee has attempted and to which it has given earnest thought and indefatigable attention and to which it has brought the talents and the experience of men who have given years of their lives to an understanding of this titanic problem. To make the reorganization of railroads and their return to private ownership a success you need not only the cooperation of presidents of banks and railroads, of financiers and traffic managers, you need the cordial, capable, enthusiastic cooperation of the 2,000,000 men who have operated this vast machine with such signal energy and efficiency. Were this some new industrial panacea, not branded all over with demonstrated failure wherever tried, it would still be objectionable at this time. Owners and operatives alike have problems enough to solve, and in their solution we need the cordial and capable cooperation of master and of man. It is not necessary, it is not wise, to endanger the success of the whole scheme by provoking the sullen opposition of those upon whom the expeditious and efficient movement of the commerce of America admittedly depends.

INDUSTRIAL PEACE BY LAW—THE KANSAS WAY<sup>1</sup>

Governor Allen of Kansas has been East on a speaking trip. He appeared before the legislatures of New Jersey and New York, addressed the Boston Chamber of Commerce, and at the Waldorf Astoria in New York spoke before five hundred diners under the auspices of the League for Industrial Rights, formerly known as the American Anti-Boycott Association. And the burden of his message was everywhere the same. It was something like this: We have found the way to industrial justice and hence to industrial peace in Kansas. We will establish in Kansas a mecca of well ordered, contented, just relationships. Unless you pass similar legislation in your states your industries will move to Kansas where operators can carry on their business in an atmosphere of well-regulated justice.

Everywhere audiences have listened to Governor Allen with deep interest. They have been impressed. Newspapers have reported that we must have this Kansas law. Public speakers have indorsed it. Legislators have introduced bills patterned after the Kansas model. Three of these are now pending in the legislature of New York. There is one in New Jersey. There is a clamor for such legislation in other states.

Never before in the history of the United States has there been so widespread a movement of this sort. There are no less than six proposals before the constitutional convention in Illinois involving a limitation on the right to strike or some form of compulsory arbitration. A constitutional amendment is proposed in Massachusetts, giving the legislature "the right to pass laws restricting the right of individuals to strike." There is a bill pending in Massachusetts for compulsory arbitration of street railway disputes, and there is one in New York covering food, fuel and transportation, in addition to the three patterned after the law of Kansas.

The Kansas law is unique. It is the first and so far the only law in any American state compelling employes

<sup>1</sup> John A. Fitch. *Survey*. 44:7-8+48. April 3, 1920.

and employers to submit their differences to a tribunal for adjudication. It is the only law ever passed in America requiring the manager of an industry to get permission from anybody before he can close his plant. In Kansas, if his industry is "affected with a public interest" he has to give reasons for any desire he may have to suspend operations, and the court will examine those reasons. If it finds them "meritorious" it will let him off. Otherwise he will have to continue to run his shop or have it taken away from him.

It would be about the same way with the workers if they had a similar right. They haven't. They can't show that their desire to quit is meritorious. It is just plain downright illegal to strike, whatever the reason. And the penalty for violation of the law is \$1,000 fine or one year in jail or both, if the offender is a "person." If he is an officer of a corporation or of a union the penalty is \$5,000 fine, or two years in jail or both.

It should be made clear that this law does not apply to all industries. It applies to industries which are "affected with a public interest." These industries are declared to be the manufacture or preparation of food, the manufacture of clothing, the mining or production of fuel, the transportation of these commodities, and all public utilities. To these industries there are added, in the Knight bill in New York the manufacture, production or handling of iron and wood products intended to be used in buildings or by public utilities.

The law creates a "court of industrial relations," composed of three "judges" appointed by the governor to serve a term of three years. The court may intervene in any industrial controversy, either on its own initiative, at the request of either party to the dispute, or on the complaint of ten citizens or of the attorney general of the state. It may investigate the controversy, making a temporary award at the beginning and a final award when the investigation is completed. The award so far as wages are concerned is to be retroactive to the date on which the investigation was begun. If wages are increased in the final award the employees are entitled to back pay. If wages are reduced, the employer is entitled to recover the excess paid in wages since the beginning of the investigation.

The investigations are to be conducted in accordance with the rules of evidence as recognized by the supreme court of the state.

There are certain principles laid down as guide to the court, and presumably for the protection of the parties involved. According to Section 9 labor is entitled to a "fair" wage and capital to a "fair return." This may or may not be modified by Section 8, which stipulates that while all conditions must be "just and reasonable," they must be such as to enable the industries in question "to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare." Either party may appeal any decision to the supreme court.

No worker may be discharged on account of any testimony he has given before the court, and no employer is to be subject to the boycott or any other discrimination on account of any act performed in accordance with the terms of the law.

Section 14 of the law has some very peculiar provisions. It sets forth that any union that will incorporate shall be recognized by the court of industrial relations as a "legal entity," and may appear before the court "through and by its proper officers." Unions, whether incorporated or not, have the right to bargain collectively, but if the individual members of an unincorporated union wish to avail themselves of this right, they must, each one of them, designate in writing some person, officer of the union or otherwise, as their spokesman.

This section is open to the inference that an unincorporated union would not have a right to appear before the court. It also raises the question of the right of such a union to engage in collective bargaining if every member did not sign a paper designating a spokesman. However, it appears from Section 9 that the right of collective bargaining may after all be an unimportant right. The court of industrial relations has final authority over agreements independently made, and may modify them if it does not find them "fair, just and reasonable."

One hesitates to criticise a project so joyously entered upon as this Kansas enterprise has been, or one in which



there is so much confident trust, with respect to its power to remedy evil. But it is being offered as a cure for industrial ills. Communities a thousand miles away from Kansas, and with more at stake, are being told, with all the assurance of six weeks' experience, that by such means not only industrial quiet, but industrial justice is to be had. The hazards are too great not to examine the molars of this particular gift horse.

The first noteworthy fact is that there are no particular qualifications mentioned in the law that the judges of the court of industrial relations must possess. That is a detail, but it is a rather important detail. Under one governor the judges might all be employers, under another they might be labor leaders, and under a third, men wholly ignorant of industry or its problems.

Limited as the court is by rules of evidence, a common sense inquiry seems to be impossible. Under the rules of evidence a witness is not permitted to give hearsay testimony. While this is an important restriction for the protection of a man accused of crime, it will not assist, in understanding the details of a complicated industrial situation. It is very difficult to see how the rules of evidence could be applied to such an investigation as the court must carry on, but if they were so applied it is obvious that the investigation would be restricted, legalistic and largely futile.

The law sets no time within which the court is to make its finding, nor is the period within which the award is to run limited. The only way, therefore, by which a revision of the award within a reasonable length of time could be forced would apparently be through the staging of a new controversy in order that the court might again be brought into the situation and be obliged to make a new award. The law, therefore, may serve to make inevitable that very unrest that it is designed to cure.

The section requiring an award to be retroactive is absurd and impracticable so far as it relates to the employes paying back to their employer the excess of wages received in the case of an award depressing their wages. There is no likelihood that the previous wage paid would be in general high enough to allow the accumulation of the excess either in the form of savings or of property. In other words,

the money would have been spent. The collection of these sums by the employer would be highly improbable. However, the existence of this provision in the law will probably be the source of a great deal of trouble. It could undoubtedly be used in the form of persecution, whether its use for any other purpose would be impracticable or not.

The protection the bill seems to throw about the workers is of very doubtful value. In asserting that the wage must be just and reasonable the bill does no more than reiterate what the most reactionary member of the community would admit. There are no standards as a basis for determining justice and reasonableness in the matter of wages. It is certain that the judgment of a court on this question would be an extremely conservative judgment.

There is an assumed protection in the provision that a workman cannot be discharged on account of his testimony before the court. It is well known that laws prohibiting the right to discharge because a man is a member of a union have been held unconstitutional by the Supreme Court of the United States. There is no reason to believe that this provision would have any better standing in court. But even if it did, it is a protection that amounts to very little. The important thing is that the right to strike is taken away, and the corresponding right of the employer to discharge whom he will with this one minor exception is left intact. The employer then could undermine an organization by discharging its leaders, by discharging every independently minded employe and have the full protection of the court of industrial relations in so doing. He could by this action so intimidate his employes that they would not appeal to the court for protection against low wages and long hours, nor testify against their employer if someone else made the appeal for them.

These are some of the defects of the Kansas law. To point them out, however, is not sufficient. It does not bring us to the heart of the matter. The law is at fault not in details, but as a whole. Its assumptions are unsound, and its purposes run counter to some of the most deeply significant purposes of modern civilization.

Compulsory arbitration is an attempt to forbid by law

the continuance of a fundamental and, so long as the present economic order shall stand, an essential controversy. Divergent interests exist and will continue to exist, and neither courts nor laws can wipe them out any more than Canute could command the tides. To forbid a group the right to exercise its group strength in the matter of industrial relations is to fasten upon industry a species of servitude. The right of the individual to quit, which is not taken away by the Kansas law, is of small significance if he is not permitted to quit in such a way as to make his act a matter of concern to the industry, and hence to make it a factor in the determination of working conditions. He is thereby denied the right to bring pressure to bear on industry to secure for the workers in it better conditions of employment. In his individual freedom to quit he can get such improved conditions only by stumbling on them, if he should be so fortunate. He may not, with his fellows, make such conditions for himself.

Nor will the court make them for him, in any degree not sanctioned by the general conception of the dominant group at the time. The court will give him "fairness and justice"—as understood by the court. The judges will be spokesmen for things as they are. They will be appointed to their positions by the powers that be. They will represent the accepted moralities; they will not be pioneers in the search for new conceptions of justice.

This is a matter of very great importance when you consider the true nature of the labor movement. Taken as a whole it is a part of a profound and fundamental struggle, ages old—the struggle upward of the masses of the people. There never has been a time in the entire history of that struggle that the vanguard of the movement was not challenging accepted ethical standards. There never has been a time when a court, its personnel made up of representative members of the dominant group, would not have ruled against these challengers. When the normal status for labor was slavery a court of industrial relations, honestly dispensing justice according to its lights, would have ruled that slaves must be so fed and housed as to enable them to maintain their strength and their numbers. It would have

frowned upon too severe beatings, but it would have ordered amputation of the ears, and branding, for those slaves who tried to stir their fellows to revolt.

When serfdom was the natural state, the court would doubtless have granted many reforms if they did not call in question the justice and fairness of the status of the serf. It was only one hundred and fourteen years ago that a judge in Philadelphia, presiding at a trial of workmen who had combined to improve their conditions, instructed the jury as follows: "A combination of workmen to raise their wages may be considered in a twofold point of view: one is to benefit themselves, . . . the other is to injure those who do not join the society. The rule of law condemns both." The jury found the defendants "guilty of a combination to raise wages."

Slavery, serfdom, conspiracy doctrines—these are, in the main, things of the past. When they existed they were the expression of the conception of "justice and fairness" of the time. Those who led the fight for a different conception were enemies of the social order.

Can anyone say that labor has now arrived at the state to which it is to be permanently assigned? There are still dissenters as there always have been who propose new marches towards a better day. Some of these plans and proposals will find expression in new demands on employers. Whether they are justified by the facts of any given situation or not, is it not reasonably certain that an industrial court dispensing justice as it is currently and generally understood would find them unjust and unreasonable? And thus the court becomes of necessity a barrier to experiments in new standards of justice.

If it is desirable for the state to intervene in the controversy between employer and employe let it do so by raising the level on which that controversy is to take place. Let there be a point below which there is to be no argument. Thus at once the bitterest forms of the controversy are made unnecessary. Above that point economic organization should be made freer, rather than less free. Voluntary arbitration should be encouraged, and the parties to the wage bargain should both be so strongly organized as to make such arbitration an agency that they may safely use.

It may not be true in all respects that that government is best which governs least, but all history, ancient and modern, gives evidence of the folly of attempts to maintain the status quo by force of law.

### COMPULSORY ARBITRATION THE NEXT BATTLE PRIZE; WHY IT FAILED IN NEW ZEALAND<sup>1</sup>

Every little while in our happy land some one has a bright, original thought about strikes, like this:

These strikes are annoying. One day I wanted to go down town and all the subway employes were out on strike, and I had to hire a taxi or walk. Once one of our maids went to the basement door to get the milk in the morning and there wasn't any milk. The milk wagon drivers were on strike. I plan to go next month to California and I am warned that I had better not go. The railroad employes may go on strike. The government ought to protect us against these troubles. Ah then! Happy thought! Let us have a law forbidding strikes. Then we can live in peace.

There is a great deal of this style of original thinking going on at present, and likely to be much more. By a narrow margin we managed to escape in the Conference Railroad bill the provisions of the venerable Cummins and others to make striking a crime, but there is indication enough that we have escaped only for a season. If the elections this year go the way they ought to go for the supremacy of our Better Elements, we shall have anti-strike bills as thick as autumn leaves, with every chance that one of them will get through.

That is our admired Congress I am speaking of. Meantime the original thinking group has been busy in the state legislatures. Kansas has passed and is trying to enforce a law that seeks to eliminate strikes by compulsory arbitration. Colorado has passed one that seeks to eliminate them by making them impossible to success. State after state is preparing to imitate one or the other of these examples.

<sup>1</sup> Charles Edward Russell. *Reconstruction*. 2:150-2. April, 1920.

In a recent speaking tour through the country the burden of the intellectual converse I heard in smoking compartment and hotel lobby was the necessity of putting an end to these confounded strikes and as none of the authorities that discussed the matter had any remedy to suggest but some kind of a prohibitory law, I think we are in for a fight over this strange issue.

But it will not be a fight between organized labor and the employing element. It will look at first like that kind of a fight, but in reality it will be a conflict in which every American that is careful about the Constitution and the foundation principles of democracy will have just as much at stake as organized labor.

For this reason, that if this idea of denying to men the right to strike and of compelling them to work when they do not wish to work receives the sanction of law and is upheld by the Supreme Court, we enter upon an entirely new period of our society by turning back to conditions and ideas dominant in this world 400 years ago, but in modern civilization held to be impossible. And if we once start upon this backward road there will be more rights torn up than the right to strike, we may be sure.

Lay aside your prejudices, fellow American, take an impartial look at this matter and see if I am not right.

All of these measures, plans and programs, the Cummins bill, Esch bill, Kansas arbitration law, Colorado strike law, blessed dreamings of the childlike second Industrial Conference, and all the rest, proceed upon some form of compulsory labor.

The Kansas law provides that industrial disputes must be submitted to a board of arbitration, pending which there must be no strike. The Colorado law provides that for thirty days after giving notice there must be no strike. The Industrial Conference dream is of a national arbitration board, pending whose decision there must be no strike. The Cummins law provided under drastic penalties that for all railroad men there should be no strike.

But, first, if by any means you compel a man to work against his will you make of him a slave. If you make him work thirty days pending arbitration when he is unwilling to work, you make him a slave for thirty days. If you com-



pel him to work for thirty minutes against his will, for thirty minutes you make him a slave.

This is not sentiment nor extravagance; it is simple fact. There is not wit enough in the world to define slavery as anything but involuntary servitude nor involuntary servitude as anything but slavery, nor undergoing compulsory labor while waiting for arbitration as anything but involuntary servitude.

As soon as we perceive that this is so (and it most assuredly is) we bump straight into the Constitution of the United States, Amendment XIII, Paragraph 1.

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

No prohibition could be more direct or explicit. We also bump just as directly into the deliberate verdict of enlightened mankind.

But, second, suppose Omnipotent Pettifogging to be able to find some way to say that black is white and thereby evade the plain letter of the Constitution, how would you make involuntary servitude practicable in this instance?

None of the gifted strike suppressors seem to have considered this little matter, but I should think it might be worth a moment's heed, if we really intend to plunge into this species of Carlovingian civilization.

If you forbid men to strike there must be penalties for violating the prohibition.

These can consist of only fine and imprisonment; there is nothing else.

How will you enforce these—upon men that do not wish to work?

I have asked this question many times. It seems to be an eminently practical, reasonable and necessary question. I have never succeeded in extracting from these original thinkers the semblance of an answer to it.

There is, however, in the experience of the rest of the world answer enough to spare.

Because—how poor are they that do not read! All of this has been threshed out elsewhere, settled and hung up in the muniment rooms of ancient history as a thing settled forever.

If now the United States, ignorant of what other peoples have learned by experience, is to start upon any proposal of compulsory labor or compulsory arbitration it will seem to the world either incomprehensibly ignorant or else afflicted in its wits.

It will be Uncle Sam in the novel role of Don Quixote donning mediaeval armor and charging at windmills.

### *No Strikes for 14 Years*

I will cite, for example, the experience of New Zealand.

Thirty years ago New Zealand likewise was endowed with persons that entertained these original thoughts about strikes. Thirty years ago they likewise started out to abolish the annoying strike from the affairs of men. And thirty years ago they not only proposed but induced New Zealand to adopt compulsory arbitration as its potent remedy. And here is what happened:

They had a national arbitration court or board to which all industrial disputes must be referred if a conciliation board had not been able to settle them.

The arbitration board consisted of three members, one elected by the labor unions, one by the employers' association and one chosen by the government from the judges of courts of record.

For some years this seemed to work infallibly, so that Henry Demorest Lloyd went down there and wrote a book in praise of the system. He called it "A Country Without Strikes," and so it seemed to be. I added my own humble pean of praise because when I went to New Zealand the first time there had not been a strike worth the name in fourteen years.

### *Why Strikes Came Back*

But there was all the time one feature of the situation that neither Lloyd nor I nor any other observer noted, and that feature so unnoticed was the inevitable ruin of the whole thing.

Year in and year out the judge, the third member of the arbitration board, and in practice the only arbitrator, cast his deciding vote in each controversy on the side of the labor representative and against the claim of the employers.

With such assistance wages rose steadily in New Zea-

land, work hours were shortened and work conditions bettered.

This was the policy of the government. Dick Seddon was prime minister and boss; he was a former miner and sturdy on labor's side.

He died and new influences came into power, including gentlemen with titles and much social ambition.

Soon afterward the employers quietly called attention to the fact that manufacturing in New Zealand could not stand any more wage increases. The limit had been reached. If wages were raised another notch New Zealand would have to retire from manufacturing in competition with other countries. Exports would cease, imports would greatly increase, and the banks—O where would they be? An echo answered, Where?

Not long after this the employes of the packing houses put in an application for a wage increase.

Meat packing and preserving was one of the growing industries of New Zealand. After the revelations about the Chicago packing houses, Great Britain and the Continent turned to New Zealand and Australia for meat supplies. Great were the hopes for this industry in both countries. But the New Zealand packers said they could not go on if the new demand of the workers should be granted.

The case came to a hearing before the arbitration board and this time the judge voted with the representative of the employers and the demand was refused.

Then the workers startled the government and the country by refusing to accept the award and going out on strike.

The law provided that awards of the arbitration board must be accepted by both sides on penalty of heavy fines. Compulsory Arbitration.

Up to that time, the awards having been generally in favor of labor and only prosecutions for failure to accept or observe the award had been of employers. Some of these had been soaked heavily.

When the workers in the packing houses refused to accept the board's finding the government proceeded in like manner to enforce the law upon them.

It came then upon the astounding fact that to enforce compulsory arbitration upon an employer and to enforce it upon an employe were two totally different propositions.

An employer had a bank account, he had a business, he had tangible assets. When he was arrested and brought up in court and duly fined the government had something to levy on.

When the packing house workers had been brought up in court and duly fined the government could find nothing to levy upon but a wash boiler and a skillet.

Nothing more comical was ever seen. It was the Gilbert and Sullivan of legislation. The unfortunate government danced about like Fantoccini, wringing its poor hands and ordering the men to go back to work, and the men just laughed and continued their strike.

It was evident that the law as it stood would not work. It wasn't strong enough, said the Original Thinkers, for the United States has no monopoly of this order of mind; what was needed was imprisonment to bring these disorderly fellows to their senses.

*"Strengthened" Law; Failed Again*

So the next session of parliament strengthened the law until they had made it stiff enough to suit the sternest Tory in the land. Workers that refused to accept the board's award or to keep at work when ordered to work were now subject to fine or imprisonment or both. And the fines were made collectable from the lawless worker's household effects or anything else that could be levied upon. If he didn't pay his fine, to jail with him and meanwhile sell his effects. And we guess that will hold them for a while, said the Original Thinkers, pleased with themselves and the outlook.

Not long afterward the coal miners made a demand for an increased wage. The arbitration board turned it down.

The miners refused to accept the award and went out on strike.

Then the majesty of the law descended upon them. They were hauled into court and heavily fined, as the law directed.

They refused to pay the fines.

Officers now went to the homes of the miners to seize household effects—as the law directed.

They siezed washboilers, skillets, tables, flatirons, the kitchen stove, the housewife's sewing machine. Seized them and carried them away.

Still the miners refused to go to work or to pay their fines.

### *Auctions That Didn't Work*

So the government offered for sale the seized household effects, the washboiler, skillet, sewing machine and the rest.

A crowd of miners' friends gathered at the sale, which was by lots, and stood about, hands in pockets.

The auctioneer bellowed and bleated. Nobody bid.

"I'll give a shilling (24 cents) for the lot," says one gent with his hands in his pockets. In vain the auctioneer bellowed and bleated. Nobody raised the bid. I am told on good authority that to raise that bid would have been regarded as not conducive to health. I do not know. Any way, nobody raised it, and the lot went for 24 cents.

"Now, then," says the purchaser to the crowd, "just lay hold and hand these things back into Sam's house, will you?"

It was the house from which the things had been seized. In an hour and a half all of the seized goods were once more in the places from which they had been taken, washboilers, skillets, stoves and sewing machines, at an expense of from 12 to 24 cents for each lot.

At this the country burst again into laughter. Even the Original Thinkers, who in the providence of God are denied ordinarily the sense of humor, could see that the government was doddering again.

There remained, however, the blessed remedy of the jail sentence. So now the poor old government began to fill the jails with these criminals that would not work when they were told to work.

About that time it occurred to someone in the government that a man can't mine coal while he is shut up in jail. The law was being enforced with a thoroughness exhilarating to behold. Jail sentences had been handed out, just as the law said, and more were preparing. But there was no coal being mined, and it was apparent that the more you filled the jails with the miners the less was your chance of getting coal.

Coincident with this remarkable discovery various persons in different parts of the country began to demand that the government should explain the difference between com-

pulsory labor and slavery and to refer significantly to the old song that says Britons never, never will be slaves, or something to that effect.

The government took but a short time to ponder this problem. With all convenient haste it arranged to save as much of its face as still remained to it, and then it abandoned compulsory arbitration.

By the stone wall route to knowledge it had arrived at the fact familiar to even the kindergarten of economics that in free and civilized nations you cannot compel men to work when they do not wish to work.

Also that without such compulsion there is no such thing as Compulsory Arbitration and cannot be.

The old Compulsory Arbitration act was not repealed, but merely thrown into the discard. In its place was adopted a system of voluntary arbitration. Each side chose an arbitrator, these two agreed upon a third, but no one again indulged in the madman's dream that the findings of these or any others could be enforced by law.

It seems now that by the good old route to the stone wall instead of the findings of all human experience we are to be led to the same result.

### *Right to Strike Fundamental*

For I am not afraid that we shall ever really have Compulsory Arbitration in this country any more than we are likely to have astrology substituted for navigation or the Book of Dreams for geometry. But what is to be feared is a legal declaration against the right to strike or some law to limit, qualify or restrict it.

Any such legislation would be a huge step backward and have the most pernicious effect upon all movement for better conditions, and in this generation all hopes for a wider and truer democracy.

Because the right to strike is absolutely fundamental. It is the most primitive and obvious of all rights. It is the first right that man secured when he began to break out of the dungeon of serfdom. It is the beginning and primer of all other rights. If man has not the right to refrain from work when he wishes not to work he has no rights at all. If the reactionaries can break down that right they can break



down all the rest. If such a right can be taken away, freedom of the press, freedom of speech, of assembly, of petition, and of the ballot can very easily be denied. Those that are familiar with the fight that has been necessary to keep this Congress from destroying those rights will not tolerate any scheme that will not only leave those rights without a defense, but make their repeal eminently logical and proper.

### *Labor's Last Chance*

It is this issue that with the ownership of the nation's highways stands out in the coming election. If the workers of this country were united, or had any habit of voting for themselves instead of voting for their exploiters we should never have heard a question of the right to strike. It is because statesmanship at Washington is convinced labor will never wake up that it dares to put over such arrant knaveries as were contained in the railroad bills. Exploitation in this country persists through the divisions of the exploited and for no other reason.

It is so with the wage workers.

So, and still worse. This year will be about the last call of grace to American labor. If it will not get together to defend itself this year it will have served notice upon all its enemies that it is nothing but a mass of putty to be shaped as exploitation may please.

The primaries are before the workers and the believers in human rights and in essential democracy. Through the primaries we have in most states practically unlimited power. If the next Congress contains a majority of men ready to make further onslaughts upon the rights of labor and the fundamental law, the fault will be ours, but the victory will be Reaction's, and with such a victory God only knows where it will stop.

## COMPULSION DOES NOT INSURE PEACE<sup>1</sup>

Australia and New Zealand have gone farther than any other countries inhabited by English-speaking men in testing socialistic and extremely paternal government. They have

<sup>1</sup> *Cleveland Plain Dealer* (Editorial). January 28, 1913.

ventured upon experiments which have no parallel in the civilized world.

Among the results which these antipodean nations—for they are virtually independent in all things affecting their own affairs—claim to have achieved is the abolition of strikes. They have boasted that their compulsory arbitration laws have put an end to strikes and lockouts and insured industrial peace.

Recent facts do not sustain the claim that such gains have been made. In twelve months Australia has had eighty-eight strikes, notwithstanding the drastic state and federal compulsory arbitration laws. Australia has less than 5,000,000 inhabitants, or about 5 per cent of the population of the United States. The country is of immense extent and the natural conditions, with manufactures at a minimum and agriculture and sheep raising of outstanding importance, are such that labor troubles ought to be few and of little moment. Yet here is the equivalent, in proportion to the population, of about 1,760 strikes in the United States.

It is not strange, in the face of such facts, that the author of the federal arbitration act said, not long ago, that never had the labor troubles of the country given thoughtful citizens more concern. The commonwealth had instituted the boldest and most advanced experiments with the object of preventing strikes and lockouts but there was an unparalleled condition of turmoil and unrest. Mr. Deakin added that, "We appear to have been practically successful in preventing employers from locking out their men, but we seem to have been unsuccessful, in most instances, in dealing with strikes."

Here is a picture of the results of compulsion in labor disputes which is of a piece with the recent news from New Zealand that an officer and a citizen were killed and other persons seriously wounded, some of them mortally, in a strike riot at Waihi. Revolvers were freely used and the authorities were unable to stop the fighting between the strikers and the non-union men until much bloodshed had taken place. And all this in a country blessed with fertile soil and a beautiful climate where about 1,000,000 persons occupy for their own use and profit almost as great an area as that of Italy or two and one-half times the space Ohio fills on the map.

These conditions in countries where compulsory arbitration has been tried to the fullest extent and in the most radical form make a sorry contrast with the virtual freedom of Ca-

nada, with a much larger population than that of Australia and New Zealand combined, from serious labor troubles. In the Dominion there is no forced arbitration, but the government does compel both sides to make their position and arguments known before a strike or a lockout. Publicity is obligatory and given official weight and sanction. The rest is left to public sentiment, and the weight of the popular verdict is almost always sufficient.

The plain truth is that men do not like to be driven. They rebel at force. The most powerful labor organizations in this country have steadily opposed arbitration made compulsory by law. They demand freedom of action just as naturally as employers do. Publicity and public opinion get results impossible from the Australian method.

### THE ANTI-STRIKE BILL<sup>1</sup>

The right to strike is not one that is peculiar to industrial labor alone—it is as universal as human life itself.

Supposing that the packers run down the price of hogs and live stock to a point where the farmers' profits are such that he cannot afford to raise them and he finds the growing of grain more profitable—what does he do? He reduces his production of live stock and increases his grain production. In other words, he goes on a strike as a live stock producer, provided the slump continues long enough. And no matter how much the public needs hogs and beef, we would not expect the farmer to be so unselfish and philanthropic that he would continue to raise cattle and hogs at a loss to enrich the packers, even though the public suffered. Just recently the cotton growers of the South formed a large organization with millions of dollars of capital to build cotton warehouses in which to store their product and hold it for higher prices, and, no matter how much the public may need cotton, they will hold it for what they think they show good sense in so doing, but they have prepared to go on a strike—to hold their product off the market until the market comes to their terms. The Farmers' Milk Producers association in Illinois has just been tried and acquitted for going on a strike. They refused to furnish

<sup>1</sup> Extract from address of F. C. Canfield, President of the Iowa State Federation of Labor. *Iowa Unionist*. January 15, 1920.

milk to the distributors excepting at the price which the farmer producers fixed. They let their milk spoil first—and I can't blame them. Yet they are pilloried as the starvers of suckling babes, because they would not furnish their product excepting at the price which they set through their collective bargaining agencies.

Capital also goes on a strike at times. When money is in great demand, the banks increase their rates of interest, which merely means that capital has struck for higher wages, and neither you nor I can get money, no matter how good our security, unless we pay the rates demanded. Supposing the steel corporation should find it immensely more profitable to use all its output for steel rails for Europe instead of for steel building materials for this country. It would go on a strike so far as the manufacture of construction materials for the United States is concerned, and no matter how badly the public might be in need of steel frame work for new buildings, it would go hang until it was willing to match the profit which Europe would pay for the steel rails. Now, unfortunately for the industrial laborer, he is not able, as a farmer and the manufacturer are, to direct his efforts along other lines when one line becomes unremunerative. He has but one line and that is his labor in the industry in which he is skilled. The farmer may turn from live stock raising to grain growing, and the steel corporation from building materials to steel rails, but the coal miner, the steel worker, is only that and nothing else. When he strikes, his work ceases altogether.

I will concede that the strike is a dangerous weapon—that it has been improperly employed at times—that it should not be used excepting as a last resort—but, conceding all these, I still maintain that it is labor's only weapon of defense, and when you take it away arbitrarily, you have disarmed one party to a controversy and have left him at the mercy of a fully armed adversary, whose attitude has never been characterized by an over-abundant love of mercy or justice.

We hear much these days of the rights of the public being paramount to that of any one class—and that is true. But the public is only made up of various classes and the right to strike is a common one to all classes—to the farmers, to capital—to everyone, as I have shown, although we call it by different names. It is a fundamental human right that we should be very slow to tamper with or to deny to any one class while

permitting it to other classes, no matter how it may be disguised. But, conceding that the public's right to coal, to transportation, to any of the other necessities of life and business is paramount, there is an equally great obligation the other way, and I think that logically it comes before the public's obligation to see that the laboring men in every essential industry are protected in their right to a fair wage, to a reasonable standard of living, to proper working conditions. If the public will see to that, it will not need to concern itself in denying labor the right to strike, for strikes are but a symptom, not the disease, and it is better to treat the disease than to seek to relieve merely the symptom. Give the workingmen of the United States justice and fair dealing, and they will not resort to the strike. The working man suffers with everyone else when he strikes—in fact, he suffers as a rule more than anyone else. He strikes because he feels he is forced to do so in self-protection. Let society protect him, and it will have removed the danger of strikes by removing their cause.

Many plans for dealing with strikes through compulsory arbitration are being suggested, such as that proposed by Senator Cummins, and I would be guilty of cowardly evasion if I did not say frankly that labor has been very suspicious of compulsory arbitration. This is due to two reasons. One is the bitter experience which labor has had with arbitration boards in the past. It has often felt that the power and influence of capital have enabled it to pack arbitration boards, to influence unduly decisions rendered, and to grant labor less than it was justly entitled to. But there is more fundamental ground than that why labor views with some alarm and suspicion the proposals for compulsory arbitration and that is because in dealing with labor you are dealing with a human and not a property right. Two men may get into a dispute over the ownership of a piece of property and arbitrate their differences or go to court for a settlement. But labor is not a commodity. It is human toil, and strength and life. Its rights transcend mere property rights. A man may arbitrate a dispute over a boundary line, but he will not arbitrate the years he may be permitted to live. Furthermore, labor feels that in the past it has been robbed of its share in the wealth which it has created by the sweat of its brow, and to ask it to arbitrate what it regards as its just claim to the reward of industry would be like asking the man who captures the burglar



in his house to arbitrate with the thief over how much of the stolen silverware he shall part with. So I say that labor will be slow to accept compulsory arbitration out of its bitter experience of the past and out of its belief that no man and no set of men is good enough or wise enough to have autocratic and compulsory power over the time, the efforts and the very lives of other men.

There is just one other point I wish to make, and that is to refer to the alternative which you force upon labor when you deny it the age-old right to strike openly and legally. The only choice left is for labor to "strike on the job" or to indulge in what we call "sabotage."

Let me emphasize the danger of sabotage. Organized labor is noted for its superior degree of intelligence, for its superior and high order of mental attainment; this intelligence and high mental attainment is being used today in the interest of increased production for the betterment of society.

If labor, skilled mechanics are denied the right to enforce its just demands by the use of their strike weapon, what assurance is there that that high degree of intelligence will not be used unlawfully in direct insidious sabotage.

There is great danger in attempting to force labor to work, by drastic legislation. We cannot by legislative power force labor to use its high intelligence to increase production either for profit of individuals or society as a whole and deny it its right to enforce a fair return for its effort.

Organized labor today is the chief bulwark against red radicalism in the United States, and whenever you do something that weakens the power of the labor leader, who desires evolution in place of revolution, you are simply weakening that defense—you are lending aid and comfort to the common enemy, which, as I have said, is the enemy of organized labor no less than the enemy of the government. But if you deny to organized labor its ancient and natural right to strike openly, you encourage the radical who preaches sabotage. If labor cannot strike as free human beings strike—openly, manfully, legally—it will strike in the more insidious way that will cripple industry even more effectually than the open strike, and in a way which it is infinitely harder to meet.

Today, when the world is calling for increased production, when we need "speeding up" in every line of industry, let us



not encourage the subtle weapon of the I. W. W., who loaf on the job, destroys machines and cripples industry in the dark.

So I plead with you today that we shall direct our attention towards correcting injuries, towards providing the square deal for industrial labor, as well as for capital, which is all organized labor is asking. If you will do this, we will not need to concern ourselves with the question of forbidding strikes, for then the laborers' and the employers' interest will be identical. There would have been no steel strike, no coal strike, if there had not been injustice and intolerable working and living conditions. Labor does owe society the right to live in comfort, but it is a mutual obligation. The interests of labor and of society at large are identical. The one can not prosper at the expense of the other. Strikes mean wasted effort, dissipated energy for society, and they mean all this and more for the working man who strikes. I hope to live to see the day when strikes have become ancient history, but we will not and should not reach that day by making them illegal, but by making them unnecessary. Let us not get the cart before the horse, nor treat the symptom instead of the disease.

## BRIEF EXCERPTS

Compulsory Arbitration means, in fact, the fixing of wages by law.—*Webb. Industrial Democracy. p. 245.*

Compulsory Arbitration is as impossible as it is undesirable.—*William J. Bryan, Commoner. 20:3 January, 1920.*

Since 1886, at least, strikes have not been increasing as fast as the population of the country.—*Adams and Sumner. Labor Problems, 8th edition. p. 179.*

The [New Zealand Arbitration] Court, while nominally a judicial body, in reality legislates upon terms of employment throughout the whole colony.—*Adams and Sumner. Labor Problems. p. 321.*

A few years ago opinion appeared to be setting toward compulsory arbitration as the readiest means of avoiding the tremendous loss and inconvenience arising from strikes; but of late we seem to be moving away from it rather than toward it. Chancellor Lloyd-George told the London Bankers' Association

the other day that labor was strongly opposed to it, and that he had been much impressed by the "suspicious attitude" of workmen toward interference by the state.—*Saturday Evening Post*, June 6, 1912.

There are some who have urged the commission to recommend the adoption of compulsory arbitration, but we cannot see our way to recommend any such drastic measure. We do not believe that in the United States such a system would meet with general approval or with success. Apart from the apparent lack of constitutional power to enact laws providing for compulsory arbitration, our industries are too vast and too complicated for the practical application of such a system.—*Report of the Anthracite Coal Strike Commission*, 1902.

The industrial relations law of Kansas, said Mr. Gompers, has taken from the workers their right of membership in themselves. They must work by order of the law, by order of the court under penalty of fine and imprisonment. If strikes conducted by well regulated organizations like the organized labor movement, are to be outlawed, then China ought to stand at the head of civilization. You will find them in the countries where discontent and injustice prevail; the manifestations will be deeper and more disastrous actions than strike.—*Chicago Tribune*, March 21, 1920.

I know of only one system of handling labor disputes through government agencies that has operated successfully, and that is the method used by the U. S. Department of Labor, through what is known as the Conciliation Division over which the Secretary of Labor presides. Its function is to bring the two sides together and to aid them in adjusting their differences by conciliation and mediation first, and, finally, by suggestions leading towards arbitration in which the government, however, does not participate. That system operates successfully.—*Victor A. Olander. Seamen's Journal*, 33:2, April 21, 1920.

The sentiment of both employers and employees in the United States is almost universally opposed to compulsory arbitration as a general method of settling labor disputes. They deprecate it on the ground that it would involve the ultimate reference of even the most important matters, the general terms of the labor contract, to persons or authorities entirely out-

side the trade concerned, and that it would be difficult to enforce the decisions of arbitrators without most rigorous measures. Both of these difficulties have already been discussed under other heads.—*Report of the Industrial Commission 1901. vol. 19, p. 861.*

Strikes among certain classes of employees are, indeed, never justifiable, and among these classes are undeniably our transportation employees. But we can not, merely because we must have uninterrupted transportation, chain these men to their posts as the Romans chained their galley slaves to the oars. The duty of refraining to strike against the public, which in a democracy is rebellion against the government itself, implies a corresponding obligation upon the public, through its representatives, to provide the employees in the public utilities with the best working conditions and the fairest wages.—*Senator David I. Walsh. Congressional Record, December 18, 1919.*

It is not easy to show that compulsory arbitration has greatly benefited the workers of the Dominion [New Zealand]. Sweating has been abolished, but it is a question whether it would not have disappeared in the years of prosperity without the help of the Arbitration Court. Strikes have been prevented, but New Zealand never suffered much from strikes, and it is possible that the workers might have gained as much, or more, by dealing directly with their employers as by the mediation of the court. As to wages, it is generally admitted that they have not increased more than the cost of living.—*Le Rossignol and Stewart. State Socialism in New Zealand. p. 243.*

In my judgment, we certainly have no right to compel men, either singly or collectively, to work for a railroad against their will; and, to repeat the illustration that I think I used the other day, suppose that when this bill passes and these railroads go back to their owners the wages are reduced 25 per cent, and this tribunal—which is the Transportation Board in this bill, a tribunal which in all probability will be made up of former railway executives—approves that cut of 25 per cent. Are you going to put 2,000,000 men in jail in this country because they collectively agree that they will not longer remain in the service of the carrier at that wage? Yet that is exactly the situation

that may well arise if the pending provisions of the bill are enacted into law.—*Senator Irving L. Lenroot, Congressional Record. December 18, 1919.*

Compulsory Arbitration has not prevented strikes in Australia. While it has, perhaps, lessened the number of strikes among the smaller unions, there is still the fact that the larger and stronger unions have over and over again refused to accept the decisions of the courts when they did not suit them. Where the courts declared their strikes illegal, the declaration was as worthless as if it were never written. And because of the power of the workers at the ballot box, no government has ever seriously attempted to enforce the anti-strike law. Anyhow, the idea of enforcing strike penalties is repugnant to the Australian character, and bitterly resented. Victimisation in any shape or form is hotly condemned not only by the workers but by the Australian people generally.—*W. F. Ahearn. Reconstruction. 2:24. January, 1920.*

It is our aim to avoid strikes, but I trust that the day will never come when the workers of our country will have so far lost their manhood and independence as to surrender their right to strike or refuse to strike. We seek to prevent strikes, but we realize that the best means by which they can be averted is to be the better prepared for them. We endeavor to prevent strikes, but there are some conditions far worse than strikes, and among them is a demoralized, degraded and debased manhood. Lest our attitude be misconstrued, we emphatically, and without ambiguity, declare our position. The right to quit work at any time, and for any reason sufficient to the workman himself, is the concrete expression of individual liberty.—*Samuel Gompers. Address before the Arbitration Conference, Chicago, 1900.*

The promise for the future lies in the rapid spread among both employers and employees of the idea of what is called in general terms industrial democracy, or in specific language the shop committee plan. The fundamental principle of this idea is that the wage-workers shall have, through the election of delegates or committees, some voice in the management of industry, especially as regards hours and conditions of labor, productive efficiency, and profits. If, through the practical application of this principle, capital and labor can be converted from inimical and mutually suspicious antagon-

ists into partners working for mutual interests and with mutual confidence, American industry may enter upon a phase of productive efficiency and creative satisfaction such as it has never known before in its entire history.—*Outlook (editorial)* 125:11. May 5, 1920.

The general public, "this so-called innocent third party," was arraigned as "the only wrong doer in industry" today by Henry Sterling, chairman of the Legislative committee of the American Federation of Labor, appearing before a Senate sub-committee to oppose the Poindexter anti-strike bill for railroads.

The proposed legislation was "founded on the theory that the public must not be inconvenienced, must get everything it wants right away," he said, and added:

"Did it ever occur to you that the public doesn't give a d—— for the man who works?"

"The public is the only wrongdoer in industry. The only party considered in the conflict is this so-called innocent third party, while as soon as we who work take some action for our own welfare, they only want to put us in jail."—*Press Dispatch*. May 20, 1920.

We are opposed to any system of Compulsory Arbitration; there is no reason to believe that such a system is generally desired by employers and employed and, in the absence of such general acceptance, it is obvious that its imposition would lead to unrest. The experience of Compulsory Arbitration during the war has shown that it is not a successful method of avoiding strikes, and in normal times it would undoubtedly prove even less successful. Disputes can only be avoided by agreement between employers and workers and by giving to the latter the greater measure of interest in the industry advocated in our former reports; but agreement may naturally include the decision of both parties to refer any specified matter or matters to arbitration, whether this decision is reached before or after a dispute arises. (*Report of the Committee on Relations between Employers and Employed of the British Ministry of Reconstruction.*) January 31, 1918. *Monthly Labor Review* 7: 457.

Generally speaking, what is called voluntary arbitration is resorted to only when one side is strong enough to compel the other to submit to it, or when public sentiment be-



comes so thoroughly aroused that arbitration is practically forced upon the belligerents. Compulsory arbitration, on the other hand, introduces a new element—the power of the State. It is binding upon both parties irrespective of their comparative strength, and the decision or award is not in accordance with the strength or weakness of the employees, but with the wishes and purpose of the state, which compels the arbitration. Compulsory arbitration is, therefore, apart from all other questions, largely a matter of the strength, stability, wisdom, impartiality, and honesty of the government; and the experience of honest government with compulsory arbitration cannot be conclusively cited for countries with corrupted governments or vice versa.—*John Mitchell. Organized Labor. p. 337.*

There should be fair tribunals to adjust wage and labor differences in the essential industries at least, and then there should be a government control strong enough to prevent any single class seeking by force or cunning to escape the judgment of a fair court and impose its will upon the whole public to the detriment of all except the few organized for this purpose.

The Cummins Bill [Compulsory Arbitration] protects every individual right to choose occupations and to leave a job whenever, wherever and for whatever reason an individual wishes to do so. That is an American citizen's right. But the Cummins Bill protects the public's right to say to any organization of individuals created or permitted under the laws, that such organizations shall not deliberately create conditions so one class has a stranglehold on the rest of the public, and then proceeds to use that stranglehold under the guise of individual liberty.—*S. J. Lowell, Master of the National Grange. Law and Labor. 2: 45. February, 1920.*

#### *Bad for Skilled Workers*

One of the main reasons for discontent under arbitration is the levelling-down process that the system makes for. The unskilled worker has secured many benefits, in the way of better conditions and higher wages under arbitration. In many cases, he has acquired a decent status because of arbitration.

But as regards the skilled worker, arbitration has in many



cases worked otherwise. The wages fixed by the courts have generally become the standards. Very few, in a general sense, have been able to get above the minimum rates, which, being fixed by the courts, have become the maximum. For the skilled worker then, arbitration has brought about a levelling down to a common plane. The best and the worst workers get the same pay. This has bred personal jealousies amongst the men, caused friction, and led, in some cases, to reduced efficiency on the part of the better and faster tradesmen, who fail to see why they should do more work for the same money paid to their less skilled and slower shop-mates.—*W. F. Ahearn, Editor "The Worker," Sidney, Australia, in Reconstruction. 2:24. January, 1920.*

Employers, who formerly condemned arbitration, now say that "arbitration has become an essential part of our social machinery and must be retained and assisted" simply because they have discovered that all they have to do is to flood the arbitration court with cases, and the court becoming congested, the cases cannot be heard till some time in the future.

There are cases now pending in the Arbitration Courts which cannot possibly be heard within the next two years. Meanwhile the workers have to keep working under existing awards, as any strike on their part while a case is registered in the courts, means that they are cancelled as a union and their awards are nullified, and they are again at starting point.

Thus arbitration can be, and is, a very good weapon for the unscrupulous employer wishing to fend off an award for increased wages till some time in the future. There is also this bitter realization on the part of the workers. During the time that the cases are thus hung up in the courts, the claims become obsolete, the cost of living on which they were based, has increased, and they are faced with either contesting a claim that is worthless to them or withdrawing the old claims and setting up fresh ones.—*W. F. Ahearn. Reconstruction. 2:24. January, 1920.*

The representatives of employers and workingmen, who have testified before the Industrial Commission, have almost uniformly opposed compulsory arbitration. Their arguments are more fully set forth in the digests of testimony of various reports of the commission. (See volume 4, p. 149; volume

7, p. 127; volume 12, p. clvii.) Several state boards of arbitration in the United States have also, from time to time, expressed their opinion against compulsory arbitration as a general principle, and one or two of the boards have specifically opposed it in any form. These boards in New York, Indiana, Ohio, and Illinois, however, have favored compulsion in certain cases, especially as to disputes which, on account of their bitterness and violence, endanger life and the public welfare, or which, like those on great railroad systems or on street railways, entail great inconvenience and loss upon the people generally. The United States strike commission, which investigated the great railroad strike of 1894, reported against compulsory settlement of labor disputes on railways, but advocated the establishment of a commission with power to investigate such disputes and to recommend terms of settlement to the parties, as well as to make public its opinions as to the merits of the dispute.—*Report of the Industrial Commission*, 1901. vol. 17. p. cxiii.

Compulsory arbitration means the opening up of the entire subject matter. It means conditions that are contrary to the spirit of our institutions and may lead to conditions that are contrary to the spirit of human rights. Compulsory arbitration if it means anything, means that the employer may be compelled to operate upon an award made by the Board of Arbitration that would lead to a loss and ultimately the wiping out of his entire capital, or it may, on the other hand, lead to employees being compelled to work under conditions that are onerous to them, that would be a species of slavery. Compulsory arbitration, in addition to opening up the entire field for consideration, creates a condition that is unfair to the employe, because in dealing with the problems before the Board of Arbitration, then the whole subject matter is thrown open, the employer is protected by a clean-cut dividing line between profit and loss, which can be shown by his records. He is protected in presenting his case before the Board of Arbitration, by that clean-cut dividing line, but the employe has no such clean-cut dividing line. The standard of living is flexible. It may be raised or lowered and the workman still lives, so the workman has no dividing line to protect him.—*Hon. William B. Wilson, Secretary of Labor, in The Colliery Engineer*. 34:296. December, 1913.

*Testimony of Carroll D. Wright, former Commissioner of  
Labor*

The first economic result of compulsory arbitration would be to compel the manufacturer, for instance, to pay a certain wage under penalties of law, which is a very direct attempt to establish wages by law, and hence prices; and any compulsory arbitration law ought to provide that if the prices are not paid, such as would be necessitated by the lawful wage, the purchaser should be held responsible in some way. And, on the other hand, it would compel the employee to work for a wage which he did not wish to, and hold him responsible under some form of penalty for not working for \$1.80 or \$2—\$1.80 when he was getting \$2, for instance—and there is no law big enough to put everybody in jail. Some would have to be left outside. Every time that any country has attempted to fix wages by law, whether in America or in Europe, there has been a very contemptible failure. The second effect of compulsory arbitration would be to compel the employer to shut up his works, and of all employees, if they did not like the decision, to quit work and leave the country. The third would be, if the manufacturer saw fit to carry on his works under the decision of a court of compulsory arbitration, to compel him to join a trust immediately; and I think if the government ever wants to drive everybody into the trust form of carrying on business the compulsory arbitration would be perfectly satisfactory. It seems to me it would kill industry. I have no faith in it, either from a moral or economic view. I have always so expressed myself. It is a doctrine which, so far as I know, finds no approval of organized labor anywhere. I have never known of any trade unionist, or member of a labor organization of whatever character, to approve compulsory arbitration. There may have been cases. Certainly the employer would not approve it. While I believe in arbitration as a help, never as a solution of labor problems, it seems to me that compulsory arbitration would be a positive injury.—*Report of the Industrial Commission* [1901]. 7:11-12.

## COMPULSORY ARBITRATION OF

NEW ZEALAND ARBITRATION STATISTICS <sup>1</sup>

Year	Awards in arbitration	Prosecutions to enforce awards	Prosecutions for strikes and lockouts
1910 .....	89	561	6
1911 .....	74	539	69
1912 .....	80	464	2
1913 .....	94	436	30
1914 .....	93	363	7
1915 .....	71	340	0
1916 .....	102	285	0
1917 .....	168	194	17
1918 .....	114	288	0
Total .....	885	3470	151

<sup>1</sup> Research Report No. 23, National Industrial Conference Board, p. 29 and 31.

STRIKES IN NEW ZEALAND <sup>1</sup>

Year	Number
1894-1905 .....	■
1906 .....	1
1907 .....	12
1908 .....	12
1909 .....	4
1910 .....	11
1911 .....	15
1912 .....	20
1913 .....	23
1914 .....	46
1915 .....	4
1916 .....	7
1917 .....	8
1918 .....	6
Total .....	169

<sup>1</sup> Research Report No. 23, National Industrial Conference Board, p. 31.

PART IV  
COMPULSORY INVESTIGATION OF  
INDUSTRIAL DISPUTES





## AFFIRMATIVE DISCUSSION

### COMPULSORY INVESTIGATION<sup>1</sup>

"Compulsory investigation," but "not to the extent of compulsory arbitration," is the pertinent suggestion of the Senate committee that investigated the steel strike in a report that appears to be broad and judicial, and calculated to carry conviction.

It is apparent that the lack of some agency before which disputes between capital and labor can be brought for investigation has been a serious handicap in securing industrial adjustments. Not only should this medium be available to both parties to the dispute, but these investigations should be compulsory. The strike or lockout may follow, but the facts would first be published by an impartial agency, and the public could then take sides according to its inclination.

Under present conditions a great upheaval occurs in industry. The public becomes a party to the controversy without having an intelligent understanding of the case. Claims diametrically opposed are put forth by the steel company and by its men, while the public knows little of the merits of the case. Public opinion has been inclined against the strikes in some cases not because the strikers have no grievance, but because they have not presented it in the right way. Similar conditions exist in regard to the coal strike. Charges and counter-charges have been made, but no one who is disinterested seems to know the facts. Few doubt the men have a grievance, a very serious grievance, but the injection of revolutionary talk has aroused prejudices that have obscured the real issue.

What the Senate committee found after the strike had been declared should have been discovered before the strike was called. And had the facts been known, had they been

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<sup>1</sup> Editorial in the Public. 22:1108. November 29, 1919.

set forth by some tribunal or other body commanding public confidence, informed public opinion would have compelled redress. Compulsory arbitration is so repugnant to labor that its use would be inadvisable even if such a law could be enacted. But compulsory investigation should be welcomed by all honest parties to a controversy. With free discussion of labor troubles and impartial reports of the facts, public opinion will compel a settlement.

### PRESIDENT WILSON RECOMMENDS COMPULSORY INVESTIGATION<sup>1</sup>

I have come to you to seek your assistance in dealing with a very grave situation which has arisen out of the demand of the employees of the railroads engaged in freight train service that they be granted an eight-hour working day, safeguarded by payment for an hour and a half of service for every hour of work beyond the eight.

The matter has been agitated for more than a year. The public has been made familiar with the demands of the men and the arguments urged in favor of them, and even more familiar with the objections of the railroads and their counter demand that certain privileges now enjoyed by their men and certain bases of payment worked out through many years of contest be reconsidered, especially in their relation to the adoption of an eight hour day. The matter came some three weeks ago to a final issue and resulted in a complete deadlock between the parties. The means provided by law for the mediation of the controversy failed and the means of arbitration for which the law provides were rejected. The representatives of the railway executives proposed that the demands of the men be submitted in their entirety to arbitration, along with certain questions of readjustment as to pay and conditions of employment which seemed to them to be either closely associated with the demands or to call for reconsideration on their own merits; the men absolutely declined arbitration, especially if any of their established

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<sup>1</sup> Extract from the special address of President Wilson in Congress on the threatened railroad strike and the eight-hour law. August 29, 1916.

privileges were by that means to be drawn again in question. The law in the matter put no compulsion upon them. The four hundred thousand men from whom the demands proceeded had voted to strike if their demands were refused; the strike was imminent; it has since been set for the fourth of September next. It affects the men who man the freight trains on practically every railway in the country. The freight service throughout the United States must stand still until their places are filled, if, indeed, it should prove possible to fill them at all. Cities will be cut off from their food supplies, the whole commerce of the nation will be paralyzed, men of every sort and occupation will be thrown out of employment, countless thousands will in all likelihood be brought, it may be, to the very point of starvation, and a tragical national calamity brought on, to be added to the other distresses of the time, because no basis of accommodation or settlement has been found.

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I yield to no man in firm adherence, alike of conviction and of purpose, to the principle of arbitration in industrial disputes; but matters have come to a sudden crisis in this particular dispute and the country has been caught unprovided with any practical means of enforcing that conviction in practice (by whose fault we will not now stop to inquire). A situation had to be met whose elements and fixed conditions were indisputable. The practical and patriotic course to pursue, as it seemed to me, was to secure immediate peace by conceding the one thing in the demands of the men which society itself and any arbitrators who represented public sentiment were most likely to approve, and immediately lay the foundations for securing arbitration with regard to everything else involved. The event has confirmed that judgment.

I was seeking to compose the present in order to safeguard the future; for I wished an atmosphere of peace and friendly cooperation in which to take counsel with the representatives of the nation with regard to the best means for providing, so far as it might prove possible to provide, against the recurrence of such unhappy situations in the future—the best and most practicable means of securing calm

and fair arbitration of all industrial disputes in the days to come. This is assuredly the best way of vindicating a principle, namely, having failed to make certain of its observance in the present, to make certain of its observance in the future.

But I could only propose. I could not govern the will of others who took an entirely different view of the circumstances of the case, who even refused to admit the circumstances to be what they have turned out to be.

Having failed to bring the parties to this critical controversy to an accommodation, therefore, I turn to you, deeming it clearly our duty as public servants to leave nothing undone that we can do to safeguard the life and interests of the nation. In the spirit of such a purpose, I earnestly recommend the following legislation:

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Fifth, an amendment of the existing federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

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There is one other thing we should do if we are true champions of arbitration. We should make all arbitral awards judgments by record of a court of law in order that their interpretation and enforcement may lie, not with one of the parties to the arbitration, but with an impartial and authoritative tribunal.

These things I urge upon you, not in haste or merely as a means of meeting a present emergency, but as permanent and necessary additions to the law of the land, suggested, indeed, by circumstances we had hoped never to see, but imperative as well as just, if such emergencies are to be prevented in the future. I feel that no extended argument is needed to commend them to your favorable consideration. They demonstrate themselves. The time and the occasion only give emphasis to their importance. We need them now and we shall continue to need them.

## PRESIDENT WILSON "EARNESTLY RENEWS" HIS RECOMMENDATIONS<sup>1</sup>

I realize the limitations of time under which you will necessarily act at this session and shall make my suggestions as few as possible; but there were some things left undone at the last session, which there will now be time to complete and which it seems necessary in the interest of the public to do at once.

In the first place, it seems to me imperatively necessary that the earliest possible consideration and action should be accorded the remaining measures of the programme of settlement and regulation which I had occasion to recommend to you at the close of your last session in view of the public dangers disclosed by the unaccommodated difficulties which then existed, and which still unhappily continue to exist, between the railroads of the country and their locomotive engineers, conductors, and trainmen.

I then recommended:

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Fifth, an amendment of the existing federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that, in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

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The other suggestions,—the provision for full public investigation and assessment of industrial disputes,—I now very earnestly renew.

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The country can not and should not consent to remain any longer exposed to profound industrial disturbances for lack of additional means of arbitration and conciliation which the Congress can easily and promptly supply.

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This is a program of regulation, prevention, and adminis-

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<sup>1</sup> Extract from the fourth annual address of President Wilson to Congress, December 5, 1916.

trative efficiency which argues its own case in the mere statement of it.

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I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the nation, at any rate before the nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself.

## GOVERNMENT PREVENTION OF RAILROAD STRIKES<sup>1</sup>

The American people awakened recently to find themselves threatened with an interruption of transportation throughout the country. This imminent danger aroused for

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<sup>1</sup> By Samuel O. Dunn, Editor *Railway Age Gazette*, in *Scribner's Magazine*, 61:307-14. March, 1917.



the first time in a majority a realization of the extent to which the public welfare has come to depend on the continuous maintenance of railway service. To ward off the blow Congress hastily passed the Adamson "basic eight-hour day" act. The railways promptly took this measure into court to test its constitutionality. Threats of a strike were then heard again.

President Wilson recommended last August the passage, along with the Adamson bill, of a measure to prohibit strikes or lockouts in train service until after public investigation of the matters in controversy. He renewed this recommendation on the reassembling of Congress in December. The need for additional legislation dealing with labor controversies on railways has been made so manifest recently that before this article appears the President's recommendation may have been acted on. The problem which gives rise to these controversies is not, however, one which legislation passed to meet a single emergency is likely to solve. It is a very difficult problem—a problem at once important, complex, and unique. It is a problem which has arisen inevitably, first, from the economic developments of our time, and, second, from the nature of the railway industry.

The changes in economic conditions which have taken place within recent years have made strikes and lockouts in many lines of business matters of serious consequence to the public. When the largest concern represented a capital of only a few hundred thousands of dollars, and employed only a few hundred workmen, when employers dealt only with their own employees, and employees only with their own employers, a lockout or strike might work great hardship or ruin to those directly involved; but the public hardly felt it. There was then little occasion for government interference except to prevent and punish violence and other ordinary infractions of the criminal law.

Within our time, however, there have been great increases in the size of business concerns. Single corporations now represent hundreds of millions of capital, and employ many thousands of men. Confronted by these huge aggregations of capital, employees have organized on a grand scale to pit against the large bargaining power of the great corporations the collective bargaining power of thousands of workers. From local bodies, labor unions have developed

into national and international organizations. Individual corporations, even though very large, have found themselves at a disadvantage when dealing single-handed with labor unions national or international in their scope. Therefore, in many industries labor unions national in their scope are now confronted with employers' associations national in their extent. Thus have combinations of capital and of labor acted and reacted on each other until there has developed a situation the significance of which, in relation to the public welfare, can hardly be exaggerated.

In no other field, however, is organized capital confronted with organizations of labor at once so powerful, so militant, and possessed of so many strategic advantages as in the railway field. The principal of these are the four brotherhoods of employees in train service—the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen. For many years each of these organizations acted alone; and it was the policy of each to deal with only one or a few railways at a time. In not a few cases failure to secure satisfactory settlements resulted in strikes of the members of single brotherhoods on single roads. Perhaps the most famous and bitterly fought of these was that of the locomotive engineers on the Chicago, Burlington and Quincy in 1888. The greatest strike in the history of American railways, that carried on by the American Railway Union in 1894, grew out of a boycott this union had declared against Pullman cars because the employees of the Pullman Company were on strike. But the American Railway Union soon went out of existence; and the course of the leading brotherhoods continued to be the same as before.

About ten years ago, however, radical changes began to be introduced in their policy. The individual brotherhoods commenced to make identical demands upon, and to insist upon carrying on negotiations with, the representatives of groups of railways operating throughout the three great sections of the country—East, South, and West. Then the other trainmen began to join with the conductors, and the firemen with the engineers, in making demands upon the railways of entire sections. Finally, in 1916, the engineers,

firemen, conductors, and other trainmen of the whole country united in making demands upon all the railways. This, it may develop, was not the climax of the railway labor movement. It is reported that the employees in train service have been trying to get all the other organized railway employees, especially the mechanics and other shopmen, to join with them in their struggles.

Every step taken by the employees has been countered by the managements. Committees representing groups of railways succeeded representatives of the individual managements in labor negotiations. Finally, in 1916, for the first time in history, a committee representing the managements of all the railways confronted committees representing men employed on all. This was followed by another event without a precedent—a meeting in Washington, D. C., of the heads of all the leading transportation systems to decide what should be the final stand of all in a labor controversy.

There will be no dissent from the proposition that revolutionary changes in economic and industrial conditions which powerfully affect the interests of the public may demand correspondingly radical alterations in public policy. Likewise, it will hardly be controverted that the growth of great combinations of capital and of huge organizations of labor largely to carry on gigantic struggles with each other has worked an economic and industrial revolution. Finally, to most persons it must be plain that the part of this revolution which has occurred in the railway industry is of peculiar importance. A nation-wide lockout or strike in any of our large industries would soon become a serious matter for the public. The complete closing down of the steel mills would speedily affect all connected with branches of industry which sell them raw materials or buy their finished products, and would soon threaten the general prosperity. Much more speedy, serious, and universal would be the consequences of a general closing down of the plants used to produce some essential of industrial activity, which is also a necessity of life, such as coal. But the most immediately and universally disastrous of all industrial catastrophes would be a nation-wide strike in railway-train service. Such a strike would at once throw all railway employees out of work. By stopping the movement of coal and raw mate-

rials, it would swiftly shut down every mine and factory. The crops of the farmers would soon be rotting upon the ground. Depriving merchants of the means of renewing their stocks, it would soon close every wholesale house and retail store. The people of our great cities are dependent from day to day for their food upon the supplies which the railways bring to them from all parts of the land; and they would all find themselves threatened with starvation. As a nation-wide strike in railway-train service would bring all industry and commerce to a stop, it would soon have the effects of a general strike of all workers such as is advocated by the syndicalists.

Until recently, it was replied to such statements that the circumstance that the movements carried on by railway employees were growing more and more extensive did not give ground for fears of general tie-ups of the railways, or justify coercive action by the government to prevent them. The ablest report on a labor controversy ever made in this country was that rendered by the board which arbitrated the wage dispute between the eastern railways and their locomotive engineers in 1912. This board, of which President C. R. Van Hise, of the University of Wisconsin, was chairman was profoundly impressed by the danger of extensive railway strikes. It, therefore, advocated the creation of state and federal wage commissions to determine the wages and conditions of work of railway employees. The representative of labor on the board (P. H. Morrissey, formerly president of the Brotherhood of Railroad Trainmen) vigorously dissented. "The developing power of the (labor) organizations through concerted methods carries with it increasing responsibilities which the organizations and their leaders recognize," said he. "They well know the value of public approval of their activities and are equally conscious of its disapproval. To intimate that the transportation of the country can be brought to a standstill at the whim or caprice of a small group of men is not a fair statement of the manner by which the powers of these organizations are exercised." There was a strike of the employees of all the railways of France in 1910, and the majority of the arbitration board described this as an example of what might occur in the United States. Mr. Morrissey denied the analogy. "The immediate cause of the French strike," said he, "was the refusal

of the railway officials to confer with the representatives of their employees in order that there might not even be a discussion of the employees' demands. There is no such condition in America."

Every argument made by Mr. Morrissey was speedily refuted by the irresistible logic of events. In 1914 the engineers and firemen of the railways west of the Mississippi River made demands upon the companies, and the companies made counter-demands. The railways offered to arbitrate the demands of both sides. The employees consented to arbitration of their own demands, but refused to arbitrate those of the railways. The order was issued for a strike. The war in Europe had just begun. It was a time of industrial and financial crisis. President Wilson intervened, finally appealing to the managers of the railways on patriotic grounds to withdraw their demands, and arbitrate only those of the employees. Only the compliance of the managers averted the disaster.

Still more impressive and conclusive was the lesson taught last year. In this instance not only did all the locomotive engineers, conductors, firemen, and other trainmen for the first time join in making demands on all the railways, but they refused to submit to arbitration in any form any of the points in controversy, whether raised by themselves or by the roads. President Wilson asked the railways to accede to the demand for a "basic eight-hour day" and leave other matters in issue to subsequent determination. When the labor leaders heard that the railways had decided to reject the President's plan, they immediately issued an order for a nation-wide strike; and it was averted only by the hurried passage of the Adamson act. The order for a strike was withdrawn only thirty-six hours before the strike was to have begun. It was clear that labor leaders who would issue an order for a nation-wide railway strike in this manner and under these conditions would put such an order into effect. It was clear that railway managers who would meet the issue unflinchingly, as the railway managers did in this instance, would let a strike come. It was evident, therefore, that the time had arrived for a change in our methods of dealing with labor disputes on railways.

There has been frequent government intervention in labor disputes on railways in this country for some years. The laws under which it has occurred have applied only to disputes be-



tween the carriers and their employees in train service. The Erdman act, passed by Congress in 1898, provided for mediation by the Commissioner of Labor and the Chairman of the Interstate Commerce Commission, and, if this failed, for arbitration by a board composed of one representative of the railways, one representative of labor, and one member chosen by these two or by the mediators. The Newlands act, passed subsequently at the joint request of the railways and the labor brotherhoods, created a permanent mediation and conciliation board of three members, and provided for arbitration, if mediation failed, by a board of six members—two representing the railways, two the employees, and two supposedly impartial. The Newlands act, like the Erdman act, left it optional with the parties whether they should accept mediation or arbitration. So long as the parties were disposed to make settlements through mediation, or to arbitrate, this system was useful as a preventive of strikes. When, however, in 1916 the employees announced that they would not arbitrate, and stuck to it, the system of voluntary arbitration broke down.

Government ownership is urged by some as a specific for all the ills which develop under private ownership; and recently it often has been suggested as the only sure preventive of strikes. But strikes have not been unknown on state railways. The locomotive engineers and firemen of the state railways of Victoria struck in 1903. A serious strike occurred on the state railways of Hungary in 1904. The employees of the state railways of Italy, by threatening to strike, succeeded in 1905 in getting rid of an objectionable general manager. The employees of the two state railways of France went on strike with the employees of all the private railways in 1910. There even has been a strike already on the railway which the government of the United States is building in Alaska; and it was successful, the strikers getting practically all they demanded.

Under either government or private ownership differences are sure to arise from time to time between the management of the railways and the employees. In case the differences become serious, and strikes are permitted, the employees, especially if they are organized, are likely to strike. The Prussian government, true to its character in other respects, makes strikes on the railways it owns and operates practically impossible by prohibiting the employees from belonging to unions or from hold-



ing meetings except such as are attended and presided over by their officers. The employees of the French railways, state and private, on the very day the general strike was declared in 1910, were mobilized under the military laws and ordered to the colors for three weeks' training. The duty to which they were assigned was that of maintaining and operating the railways in the usual manner. It will be noted that this strike was on both state and private railways, and that precisely the same measure was used on both to break it. Similar methods were employed in breaking the strike on the Hungarian state railways in 1904.

It would be neither practicable nor desirable for the government of the United States to interfere, after the Prussian manner, with the organization of railway employees. Nor would it be possible in this country, at least in time of peace, to break a strike by mobilizing railway employees, as was done in France and Hungary. At the same time, our recent experience demonstrated that we could not reasonably hope much longer to avoid nation-wide railway strikes unless some form of coercion was adopted by the federal government to prevent them.

Legislation has been passed in many countries for the prevention of strikes and lockouts, not only on railways and other public utilities, but in industries of almost every kind. Until a comparatively few years ago proposals for the arbitration of labor disputes usually originated with labor and were often rejected by capital. Consequently, at that time labor leaders, seconded by most social reformers, advocated legislation making arbitration compulsory. Within the last quarter-century this system has been tried in several countries, especially New Zealand and Australia. The original compulsory arbitration act of New Zealand was passed in 1894. District boards of conciliation, consisting of both employers and employees, and a court of arbitration, consisting of a president, one representative of the unions of employers and one representative of the unions of workers, were created. Reports as to the operation of this system are practically unanimous. From 1894 to 1900 New Zealand was prosperous; the awards of the arbitration court usually resulted in substantial advances in wages; and during this time compulsory arbitration was in high favor with labor, and there were no strikes. During the next six years the country was less prosperous, the awards began to result in small

increases in wages or none, and, as one author says, "labor became less satisfied, and capital less distrustful," but there were still no strikes.

Between 1906 and 1912, when labor was "in open revolt and capital endeavored to uphold the act," there were sixty-three strikes. The first of these was declared by the employees of the street railways of Auckland in November, 1906, showing that the law was no more effective as applied to public utilities and their employees than as applied to other employers and their employees. There was provided a maximum fine of two thousand five hundred dollars for any employer and one of fifty dollars for any employee who should violate the arbitration law; and in this case both the company and the striking employees were fined. But from that time strikes continued to occur in various lines of industry in spite of the fact that fines continued to be imposed. In 1909 the law was amended. Three permanent commissioners of conciliation are now appointed by the government. In case of a labor dispute one of them goes to the scene and tries to settle it. If unsuccessful he organizes a council of conciliation which includes two or more representatives of both parties. Every dispute must now be referred to such a council before it can be carried to the arbitration court. This system is said to work better than the earlier one; but the record shows that while compulsory arbitration in New Zealand has prevented lockouts, it has not prevented strikes. It has been found possible under it always to enforce awards against employers, but not always against employees. In other words, the system is effectively compulsory only in its application to employers.

The experience of Australia has been similar. The Australian commonwealth has a compulsory arbitration act which has been in effect for twelve years, and the different states have tried various similar schemes. They, also, have prevented lockouts, but not strikes. Norway formerly had a compulsory arbitration law, but opposition to it by both capital and labor caused its repeal. After a general strike in 1916, which itself followed a strike of four months in the mining and iron and steel industries, another compulsory arbitration law was enacted to remain in effect during the continuance of the present war in Europe.

A measure similar in purpose to those mentioned, but narrower in its scope, and differing widely from them in the means it provides for accomplishing its ends, is the Industrial Disputes Investigation Act of Canada. This law was passed in 1907 as a result of a serious and protracted coal-mine strike in one of the Western provinces. It applies to railroads and other public utilities, to mines of all kinds, and, by a recent amendment, to all industries engaged in productive operations of any kind for military purposes. It prohibits, under heavy penalties, a lockout or a strike until the matters in dispute shall have been referred to a conciliation and investigation board. The party about to lockout or strike must give notice to the Dominion government, together with a statement regarding the matters in controversy. The Minister of Labor calls on each party to name a member of the board. These two are given opportunity to name a third, who becomes chairman. If they fail to do so, he is appointed by the Minister of Labor. The primary function of this board is that of mediation. If it fails to effect a settlement, it takes testimony and prepares a report, which is made public, summarizing the evidence and giving its conclusions as to the bases on which a settlement should be made.

This measure differs from those establishing compulsory arbitration in not requiring obedience to the awards made under it. Like them, it has not succeeded entirely in preventing strikes. But almost always in cases of industrial disputes its provisions have been obeyed, with resulting peaceful settlements in a large majority of cases. Of eighty-five disputes on railways which have been investigated under its provisions, all but seven have been settled without strikes or lockouts; and, as already indicated, the Canadian law applies to disputes affecting any class of railway employees, not merely those in train service.

Our experience in the United States has shown that a system which leaves mediation and arbitration of labor disputes on railways entirely optional with the parties cannot be relied on to safeguard the interests of the public. At the same time the experience of other countries with compulsory arbitration shows that while it is attractive in theory it often proves unworkable in practice. If employees are determined not to carry out the terms of an award, there appears to be, at least in democratic

countries, no practical way of compelling them to do so. Fines have proved ineffectual, and provisions for imprisonment probably could not be enforced.

For the present it seems best to take in the United States a middle course between the policy of entirely voluntary arbitration and that of compulsory arbitration. In other words, we should apply to labor controversies threatening to interrupt railway service a system modelled after that of Canada. The most important feature of that system is that it does not make lock-outs and strikes illegal and arbitration and acceptance of the awards compulsory, but that it merely makes strikes and lock-outs illegal if declared before there has been a public investigation of and report on the matters in controversy.

Most of the leaders of organized labor formerly advocated compulsory arbitration. At present, most of the labor leaders of this country oppose the placing of any restriction on the right of railway employees to strike. They declare that merely to prohibit strikes until there can be public investigation is to subject railway employees to "involuntary servitude." But such a system does not involve any abridgment of the freedom of the individual. It merely imposes a limitation on the action of employees collectively; and no principle of economics or jurisprudence is more fundamental than that it may be the right and duty of society to impose restrictions on the collective action of large numbers of men which it would be wrong to impose on the action of individuals.

"Involuntary servitude" is merely a euphemism for slavery. It is obvious that legislation prohibiting strikes until after public investigation does not establish slavery. Therefore, we must look beyond this argument for the true reason why labor leaders are so strongly opposed to any restriction of the right of railway employees to strike. The true reason probably is that they fear such restriction will result in weakening the bargaining power of the labor brotherhoods. As already stated, the labor situation on railways and other public utilities is unique, and this point calls attention to one of the most important conditions which make it unique. In every other class of industry employers have the same legal power and moral right to seize upon favorable opportunities to force through reductions in wages and changes in conditions of employment by resort to

the lockout that the employees have to seize upon favorable opportunities to force through increases in wages and changes in conditions of employment by resort to the strike. Therefore, in any other industry in which both employers and employees are strongly organized there may be a substantial parity in their collective bargaining power. In the case of railways and other public utilities, on the other hand, the employer may not legally suspend operation. This means, as to most classes of employees, that he cannot use the lockout. In consequence, if the employees of railways and other public utilities are permitted to strike whenever they please, this gives them in collective bargaining an important advantage. The employees in railway-train service in this country have used this advantage often and skilfully. It is mainly owing to this that they have got their wages on a basis higher than those of any other workingmen in the world. A law absolutely prohibiting strikes in train service, if enforced, would largely destroy the advantage in bargaining possessed by these employees. A law merely prohibiting strikes until after public investigation will greatly impair it. While the investigation is going on the most opportune time for putting a strike into effect is likely to pass, and the ardor of the men for it is likely to cool. This will be partly because of the delay involved. It will also be partly because of the fact that the public will be informed as to the matters in controversy; that it will have before it the recommendations of an impartial board as to a settlement; and that it probably will strongly oppose and condemn any move to bring about a strike in disregard of these recommendations.

From the standpoint of the leaders of organized labor these are strong arguments against imposing limitations on the right to strike. From the standpoint of the public they are just as strong arguments in favor of imposing such limitations. It is not to the interest of the public that the employees of railways and other public utilities shall possess a disproportionate power in bargaining with their employers. The profits of public utilities, unlike those of other concerns, are controlled by public authorities to prevent them from becoming excessive. Since such concerns are required to do business on a comparatively narrow margin of profit, every considerable change in the wages they pay must affect the rates they charge the public or the ser-



vice they render to it. It is hardly necessary to add that it is to the public interest to interpose all reasonable obstacles in the way of strikes.

However, before a system of compulsory investigation of industrial disputes can be made to accomplish the greatest good, it will have to be given some features which have not yet been introduced into it. Its most important object should be to prevent strikes; but it should also aim to secure settlements of disputes which will be just to all, including the public. But what is just cannot well be determined by such temporary boards as have been organized under the Industrial Disputes Act in Canada and under the Erdman and Newlands acts in this country. The determination of the conditions of employment and the wages that should prevail on railways is as technical, and almost as important, a matter as the determination of railway rates. Therefore the investigation of labor disputes on railways, like the regulation of rates, should be delegated to some body which, from the training and experience of its members, will be skilful in getting at the true facts and conditions, and in making sound and fair recommendations as to settlements. The body to which this function logically should be delegated is that which already regulates railway rates and operation, viz., the Interstate Commerce Commission. In any event, the connection between the body that investigates labor disputes and the body that regulates rates and operation should be close.

Probably the best alternative to turning the entire matter over to the Interstate Commerce Commission would be to provide that each investigating board should be composed of the following: (1) A permanent chairman, who preferably should be an army officer, and who, because of the permanency of his tenure, would in time become an expert on labor controversies; (2) a member of the Interstate Commerce Commission, to be designated for the occasion, by that Commission, who would bring into the deliberations a broad knowledge of the railway situation; (3) a member of the Federal Trade Commission, to be designated for the occasion by the Trade Commission, who would bring into the deliberations a broad knowledge of the general business situation; (4) a representative of the railways, who would bring expert knowledge of railway matters and express the railway point of view; (5) a representative of the em-



ployees, who would bring expert knowledge of the labor situation and express the labor point of view.

The Erdman and Newlands acts provided for arbitration boards composed of equal numbers of representatives of the railways, of the employees, and of the public. It has been justly complained of these boards that the minority of their members representing the public were impartial but not expert, while the majority, representing the employers and employees, were expert but not impartial. Either the Interstate Commerce Commission or boards organized according to the alternative plan suggested above would largely obviate these objections.

As important as it is that the public should have railway labor controversies elucidated for it by an expert and impartial board, the service which such a board could render in influencing the attitudes of the immediate parties themselves might be more important. In order that this service might be rendered in the most efficient manner, the law should provide that no strike vote might be taken until the investigating board had made its report, and that with every strike ballot sent out there should be enclosed a brief statement, prepared by the board itself, setting forth its conclusions and recommendations and the reasons for them. It might be well to provide also that strike votes must be by ballot, so that no employee may be prevented from expressing his true sentiments. The question whether the railway transportation of the United States shall be interrupted is a more important one than most of those voted on at political elections, and therefore no pains should be spared to insure that it will be voted on intelligently and without duress.

The insuperable obstacle that has been encountered in the administration of compulsory arbitration laws has been that of getting employees to carry out awards. Will equal difficulty be met in the administration of a well-devised scheme of compulsory investigation? Both consideration of the conditions and the experience of Canada indicate that it will not be. The only prohibitions of such a system are those applying to strikes and lockouts previous to investigation. There is no reason why the penalties applicable, on the one hand, to the railway companies and their officers, and, on the other hand to the officers of the unions, to their individual members, and to the union, themselves and their properties and funds, cannot be made heavy

enough, if enforced, to secure obedience to the law; and it should be much easier to secure enforcement of penalties for violations of such prohibitions than to secure the enforcement of penalties against men who have struck rather than carry out an award already made and which they regard as unjust. There is no "involuntary servitude" in the former proceeding. The latter savors strongly of it.

It is not probable that a plan such as that outlined would secure entirely equitable settlements of railway labor controversies; but it would secure much fairer settlements than any plan tried heretofore. It is not probable that it would entirely prevent strikes in railway-train service, but it would almost certainly prevent nation-wide tie-ups while strictly limiting the number affecting smaller areas. Should a well-devised scheme of compulsory investigation of railway labor disputes fail, public sentiment might be educated by its operation and irritated by its failure to a point where it would cause the enactment and enforcement of a law entirely prohibiting railway strikes.

## THE CANADIAN INDUSTRIAL DISPUTES ACT<sup>1</sup>

Twenty-two years ago traffic upon some of our largest western railways was interrupted or suspended by a widespread and protracted strike. Business was seriously affected, millions of dollars were lost by the disputants and the general public, and mob violence for a time threatened the very foundations of government. Finally order was restored and necessary intercourse was resumed under the protection of federal troops. A United States strike commission was appointed to investigate this disturbance and to advise measures for preventing a similar calamity in the future. This commission recommended that lockouts and strikes upon railways engaged in interstate commerce be prohibited by law until the grievances at issue had been officially investigated, and the public had been informed why its own rights and interests were to be so seriously violated. The present year a strike that promised to be even more extended

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<sup>1</sup> Victor S. Clark. *Proceedings of the Academy of Political Science*. 7:10-18. January, 1917.

and disastrous than the one in 1894 impended. Congress had not yet provided an adequate remedy for such a crisis, and the lessons of the previous episode had been forgotten. Therefore again, twenty-two years after the strike commission of 1894 reported, the President of the United States was called upon to protect vital national interests from industrial warfare; and he repeated in his appeal for aid to Congress the recommendation made by President Cleveland almost a generation ago, that lockouts and strikes upon railways engaged in interstate commerce be made illegal, unless preceded by a public investigation.

Meantime Canada, whose industrial conditions are almost identical with our own, had grappled resolutely with this problem. Ten years ago a bitter and prolonged coal strike in Alberta deprived the western provinces of fuel; so that as winter approached, prairie settlers could not heat their homes, public schools were closed, and industries using steam power curtailed or suspended operations. What the anthracite coal strike of 1902 was to our eastern states, the strike of 1906 was to the people of the Canadian northwest. This private disagreement of a small group of employers and workmen so threatened the welfare of that entire region that the Dominion government was forced to intervene; and partly by moral suasion and partly by the power of public opinion it finally compelled a settlement of the dispute and a resumption of coal production.

Unlike the United States after the great railway strike of 1894 and the anthracite strike of 1902, Canada at once took positive steps to prevent or control similar crises in the future. In recommending a law for this purpose, Mr Mackenzie King, then deputy minister of labor of the Dominion, thus stated the guiding principle of such legislation: "In any civilized community private rights should cease when they become public wrongs." I should like to make that statement the text of my remarks; for it defines the only ground upon which the public is entitled to interfere in a mandatory way with the negotiations between workers and employers.

The measure Canada adopted went beyond voluntary conciliation and arbitration laws, which were already on the statute books. Such laws had been enacted also in the United States, and in both countries they had been of ser-

vice; but when most needed they had failed in Canada as completely and as conspicuously as they failed in our own great railway dispute last summer.

On the other hand, the government was not ready to adopt compulsory arbitration, such as is in force in New Zealand and Australia. Let me repeat that the Canadian industrial disputes act is not a compulsory arbitration law, because that erroneous opinion seems to prevail widely in this country. Canada's purpose was not to compel the parties to a dispute to accept a government decision, nor to regulate by official mandate the working conditions of any class of labor; its purpose was limited to forbidding lockouts and strikes that directly affect the public welfare until their causes have been authoritatively investigated, and have been made known to the people who will suffer through them. In connection with this investigation, the law provides machinery not essentially different from that established by earlier conciliation acts in both Canada and the United States, to assist the disputing parties in a voluntary and friendly settlement of their difficulties. The conciliation features of the act of 1907 were not novel, but were mainly a re-enactment of previous statutes; while the compulsory investigation features were at that time practically new in American labor legislation.

The jurisdiction of the law extends only to industries that serve immediately the general public. These embrace railways and transportation lines, yard and wharf labor, telegraphs and telephones, power, light and traction companies, and mines. Workers and employers in any industries not directly included within the act may by mutual agreement apply to have their difficulties investigated and adjusted under the same law; but this is merely using its machinery for purposes called for by any conciliation statute. Recently as a war measure the jurisdiction of the act has been extended to munition workers and others employed in war industries; but this is a temporary expedient in an extraordinary emergency, to be justified on the same grounds as the original law. In a word, the operation of the act is confined to industries where a cessation of labor would cause more damage to the general public than any prospective advantage to either party in the dispute would compensate.

The law attempts to apply the principle of the greatest good to the greatest number.

No change in the labor conditions of these industries can be made without thirty days notice. If either employers or workers object to a proposed change they may apply to the federal Minister of Labor for a board of investigation and conciliation, showing that a lockout or strike will occur unless the points at issue are settled. Thereupon the minister, after assuring himself of these facts, appoints a board for that particular dispute. This board consists of three members, one of whom is nominated by the workers and another by the employers. These two select the third member, or if they fail to agree the Minister of Labor appoints him. The third member is chairman of the board. Please note that the board is not a judicial body or a non-partisan umpire, but an investigating and conciliating agency containing representatives of both sides of the controversy. However, no person having a direct money interest in the business affected by the dispute is eligible to membership.

Wide latitude is given the boards in their method of conducting an investigation and bringing the opposing parties to an agreement. They have the powers of a court to summon witnesses, to require the production of books and papers, and to take testimony under oath. They may personally inspect works and factories concerned in a dispute and interrogate employees. Most cases referred to boards have been settled without a disagreement. But if the parties cannot come to terms the board reports its findings, which need not be unanimous, but may consist of a majority and a minority report, or conceivably of three individual reports. These contain a statement of the grounds of the dispute, an opinion as to the justice of the respective claims presented, and recommendations for a settlement of the points in controversy.

Pending the investigation a lockout or strike is prohibited under penalties ranging \$100 to \$1000 a day for lockouts, \$10 to \$50 a day for striking, and \$50 to \$1000 for inciting or aiding an unlawful lockout or strike. But after a board has reported, employers may lock out their employees, or workers may strike, if they wish to do so. The only exception to this rule is when both parties have previously signed



a formal agreement to abide by the decision of the board. In that case they can not break their contract.

This summary review of the main provisions of the act necessarily omits many details that are important in its practical working, but that can not be discussed in a short paper without obscuring the law's leading principles. The two features that chiefly distinguish the industrial disputes act of Canada from the Erdman law and the Newlands law in our own country, are the compulsory investigation of certain labor controversies and the prohibition of lockouts and strikes pending that investigation.

More than nine years have elapsed since Canada placed these provisions on the statute books. Up to the 18th of last month 212 disputes had been referred for adjustment under the law, and 21 strikes had occurred; so that about nine out of ten disputes were settled without stopping work. Of these 212 disputes, 167 were reported on by board or settled through their mediation, and the others were terminated before boards were organized or while the disputes were still under investigation.

If we classify these references by industries, during the first nine years of the act seventy-five boards were appointed in railway disputes, and in all but six of these strikes were ended or averted. City traction lines were involved in twenty-one references, only two of which terminated in a strike. Only one out of nine cases of labor difficulty upon municipal works caused a stoppage of labor. Eleven shipping disputes, two upon telegraph lines, two upon telephone lines, and three affecting light and power companies, were settled without a single interruption of employment. On the other hand, out of forty-three disputes in coal mines, six resulted in strikes; while in metal mining only eight out of thirteen controversies referred to boards were amicably adjusted by them. The act has not been so successful in mining as in transportation and other public service industries, partly because popular sentiment is less intelligently informed and less actively interested in mining controversies than in those more immediately affecting the general welfare. Moreover the figures quoted, which are taken from official reports, must be qualified by the fact that labor difficulties not here recorded have occasionally ensued where the application of the act has been doubtful, or after a board has reported and its findings have been accepted by one or both of the parties.



Furthermore, a mere enumeration of disputes, without regard to the relative importance of individual controversies, gives little information as to the real service of the act. One big dispute ending in a strike may outweigh many little difficulties settled amicably. Statistics can not measure the respective importance of averted and actual strikes, because the duration and extent of a potential strike are matters of conjecture. As a rule, however, the larger the threatened disturbance, the harder it is to handle; and it is in the field of big strikes that legislation of this character usually makes the poorest showing. Probably the number of employees involved in strikes that have occurred in Canada either in violation of the industrial disputes act, or legally under that act because workers refused to accept the findings of a board, averages larger in each difficulty than the number involved in disputes that were successfully adjusted. Nevertheless, no great strike affecting immediately the public welfare has paralyzed the industries of Canada since this law went into operation.

Illegal strikes are of two kinds, those started in ignorance of the law or in doubt as to its application, and those in clear defiance of government intervention. The few strikes that have occurred in open contempt of the act were not in disputes where the outside public had much interest at stake, and usually were to be explained by some local condition that prompted irresponsible men to impulsive action. Some years ago the United Mine Workers in western Canada struck in violation of the law, but later they themselves applied for a board, which was granted and settled the difficulty. Similar strikes have more recently occurred among coal miners in Nova Scotia, where there is a long standing jurisdictional fight between a union that favors the act and one that opposes it. In case of such violations the government may prosecute the offenders; but in practice it generally leaves the enforcement of the penal features of the law to the aggrieved parties in the dispute. As might be anticipated, neither employers nor workingmen often care to assume the trouble and expense of court proceedings. One employer has been fined for an illegal lockout; a few union officials have been fined for inciting strikes; and an agent of the United Mine Workers has been convicted both in the lower courts and on appeal for paying strike relief to members of the union who had violated the law. However, no effort has been made in the past to punish a large body of men for striking.

This raises the question of the value of the penal provisions of the law. It is argued that if the act does not put strikers in jail and subject offending employers to heavy fines, these provisions are useless. But even though violations are seldom prosecuted, neither strikers nor employers dare to defy the law of the land in disputes prominently before the public and affecting the prosperity and comfort of a large body of citizens. By doing so they would put a powerful weapon in the hands of their opponents, and they would fatally prejudice their case in the high court of public opinion.

The original statute was amended in 1910, and a bill revising and extending its provisions has been prepared and will probably be brought before Parliament at the close of the war. Both the amendments already made and the proposed revision are designed chiefly to simplify and expedite procedure and to hasten decisions. Another projected change would permit municipalities to apply for boards in disputes that threaten the welfare of their citizens, though the municipal government is not a party to the controversy. It is also proposed that the government, where requested by both parties, shall register collective bargains or industrial agreements entered into by workers and employers, whether made through a board of investigation and conciliation or without government mediation, and that when so recorded these agreements shall be enforceable by law. The new bill also provides that boards may be reconvened for the purpose of interpreting their awards. Recently when a serious strike seemed imminent on the Canadian Pacific railway another defect in the present law appeared. This dispute was investigated and reported upon by a board of investigation and conciliation in 1914, just as the war broke out. The employees refused to accept the board's recommendation, but deferred striking on account of the war. The present autumn, two years after the findings of the board of 1914 were published, they claimed the right still to strike on account of their rejection of the previous report. Happily this controversy was settled without an interruption of traffic; but the law ought to limit the period after a board reports during which a lockout or strike may be entered into without a second investigation.

Some years ago, while this legislation was still new, I was twice commissioned to investigate its operation for our government. Since these two visits, which extended through nearly

all the provinces of the Dominion, I have had little opportunity to interview workingmen and employers directly affected by the act. At that time it was commended by the general public, by employers, and by the mass of working people; but it evoked criticism from some labor leaders. However, these objections were to details of the law rather than to its fundamental principles. When the amendments of 1910 were before Parliament, the Minister of Labor read letters from the legislative representatives or other high Canadian officers of the brotherhoods of locomotive engineers, of locomotive firemen and enginemen, of railway trainmen, of maintenance of way employees, and of the order of railway telegraphers, all commending the existing law and the proposed amendments. The president of the brotherhood of maintenance of way employees characterized the act as "one of the best pieces of legislation that has been passed to my knowledge in the interest of industrial peace." Sir George Askwith, who investigated the working of this law for the British government late in 1912, stated in his conclusions:

I was struck by the remarkable difference of attitude displayed by railway union officials generally, as compared with some of the trade-union leaders in other trades. The former appeared to recognize that the holding up of a railway system by a strike was a procedure only justifiable as a last resort, and that it was due to the public that every possible step be taken to arrive at a settlement before recourse was had to a strike as a measure of adjusting differences. The result of this attitude has been that the Canadian railway unions . . . have frankly accepted the spirit of the . . . acts, and apply as a natural course for boards of investigation and conciliation when difficulties that threaten to become serious arise. . . . At the meeting of the trade-union congress that I attended at Guelph, it was the officials of the railway unions who spoke most strongly in defense of the act. . . . The acceptance of the theory that the public have a right to be informed impartially of the merits of the questions which gravely threaten their well-being, and of the spirit of the acts, has been so far adopted by those concerned with the Canadian railway system as to place the country in almost as safe a position against serious stoppage as it is possible to reach.

Recently the trade-union congress of Canada passed a resolution asking that the law be repealed. During the Senate hearings upon the eight-hour law for train operatives, passed by Congress last September, Mr. Garretson, president of the Order of Railway Conductors, and Mr. Gompers, president of the American Federation of Labor, strongly opposed similar legislation in the United States. The influence of organized labor this side of the border is said to account for some of the opposition to the act in Canada. International unions have their headquarters in this country, and their officers do not like to give up the right to call a strike in Canada, if necessary in order

to enforce demands upon employers in the United States. Moreover union leaders want the power to call sudden strikes, and claim that the Canadian act gives employers time to strengthen themselves against labor outbreaks. But no great strike, especially upon railways or in other industries of national importance, can now occur without preliminary negotiations that sufficiently warn employers in advance of impending trouble. Any union that called a strike affecting widely the general welfare without first attempting a friendly settlement of its difficulties would be defeated by public opinion. My own experience with workingmen has been that opposition to government mediation is stronger among union leaders than among their followers. Strikes are like wars; they open opportunities for prominence and distinction to the officers who lead them, but only hardship and suffering to the rank and file who fight them. Still, the distrust with which workingmen regard laws to control their relations with employers is very deep. It is founded on an inherited memory of ancient abuses of authority, and upon an instinctive conviction that the workers themselves are the only sincere defenders of workers' rights. A law upon Canadian lines would need to be very liberally drawn, very tactfully administered, and very leniently enforced to win the confidence and support of American labor. Nevertheless legislation in this direction is demanded in the United States by the interest of all the people. The general right of workers to better their condition by any means not detrimental to society as a whole is sacred. But the private right of any group of citizens, whether employers or employees, to impose its demands by unregulated force should cease as soon as it becomes a public wrong.

STATEMENT BY HON. G. D. ROBERTSON, LL. D.  
MINISTER OF LABOR OF  
THE DOMINION OF  
CANADA<sup>1</sup>

The Industrial Disputes Act is not a compulsory arbitration law. The only element of compulsion it contains is this, that in the case of disputes affecting mines, agencies of transportation

<sup>1</sup> Written especially for the Debaters' Handbook. April 20, 1920.

and communication and other public utilities to which the statute applies it makes unlawful the declaration of either a strike or lockout until a real effort has been made to secure a settlement, and, if the parties concerned have been unable to reach a settlement between themselves, it invokes the assistance of a Board of Conciliation and Investigation to promote an adjustment and bring out the facts.

During the fourteen years which have elapsed since its enactment its provisions have been applied to 445 disputes, in connection with which the parties concerned had failed to agree on terms of settlement, and concerning which a sworn declaration had been furnished in each case setting forth that "failing an adjustment or reference of the dispute to a Board of Conciliation and Investigation under the act a lockout or strike will be declared and that the necessary authority to declare such lockout or strike had been obtained." It is significant of the success of the act that in all but twenty-seven of these cases the threatened strikes or lockouts, as the case may be, were averted or ended. Moreover, in most of the instances in which interruption of work actually occurred (for the findings of a Board of Conciliation and Investigation under the act are not made binding on the parties concerned), the ultimate settlement was on the basis of the Board's report. During this fourteen year period there was only one serious interruption of railway train service. Unfortunately, the law has not been as well observed in disputes affecting the mining industry, but in these fields also its practical value has been fully proven. Through its operation there has been an almost complete avoidance of strikes on street railways. The telegraph and telephone service of the country have also been saved from interruptions which would otherwise have occurred. Undoubtedly, the public has benefited greatly by the uninterrupted operation of agencies of transportation and communication, whilst experience has shown that the rights of employers and employees have been safe-guarded and upheld.

The Industrial Disputes Investigation Act, like all other good things in this world, has not escaped criticism; nor would it be possible for any law bearing on a subject fraught with so many difficulties to meet with universal favour. During the earlier stage of its operation resolutions were passed by some of the labour bodies calling for its repeal. It is significant of the pres-



ent attitude of the Trades and Labour Congress, the most representative body of organized labour in Canada, that at its last annual meeting a resolution was adopted asking the government to amend the law so as to bring civic employees under its operation. On the other hand, a proposal has been received recently from the representative body of employers engaged in the building and construction industry throughout Canada favourable to the extension of the act to disputes affecting this important industry.

Apart from its application in the case of disputes affecting mines and public utilities, the Industrial Disputes Investigation Act has also had a limited application, by joint consent of individual employers and groups of employees to disputes affecting other departments of industry, such as building and construction, meat and fish packing, manufacturing, etc., and in nearly all of these last named cases satisfactory settlements were reached through the Board's efforts.

The operation of the Industrial Disputes Investigation Act is reviewed in the report of the Deputy Minister of Labour for the year ending March 31, 1919.

## TRIAL BY JURY<sup>1</sup>

Several years ago, when we had to adjust a wage controversy with the engineers on our eastern roads, a very distinguished board of arbitrators, in settling our differences, pointed out the dangers inherent in attempting to settle railroad industrial disputes by resort to the strike.

This board said: "From the point of view of the public it is an intolerable situation when any group of men, whether employees or employers, whether large or small, have the power to decide that a great section of the country shall undergo a great loss of life, unspeakable suffering and loss of property beyond the power of description through the stoppage of necessary public service. This, however, is the situation that confronts us as a nation."

It was the opinion of this board that "the public utilities of the nation are of such fundamental importance to the whole

<sup>1</sup> Elisha Lec, Assistant General Manager of the Pennsylvania Railroad. *Independent*. 89:143-4. January 22, 1917.



people that their operation must not be interrupted, and means must be worked out which will guarantee this result."

That situation, so vividly portrayed, still confronts us as a nation. It confronted us in that crucial week in August when the president told the country "This situation must never be allowed to arise again."

The remedy proposed by the president is that "a full public investigation of the merits of every dispute shall be instituted and completed before a strike or lockout may lawfully be attempted."

This, in essence, is compulsory investigation rather than compulsory arbitration—restricting the right to strike or lockout pending an investigation, but in no way restricting the right of the parties in the controversy to fight it out afterward should they refuse to accept the recommendations of the board.

It seems clear to me that a differentiation between private industrial warfare and public industrial warfare such as a railroad strike is essential to any intelligent understanding of the question at issue. Private industrial warfare, in other words, need not here be considered at all. The situation is different. The premises are different. The conclusions must be different. This fact is reflected, of course, in the very law proposed by the president in that it is concerned only with interstate commerce.

When we were in Washington, we heard the chief spokesmen for several million organized workers warn congress that any law restricting the right to strike would be fought by the workers he represented. Mr. Gompers, in speaking before the senate committee, placed in the record, as the view of organized labor, the dissenting opinion of the late Justice Harlan in an admiralty case, in which the principles of human liberty as guaranteed by the constitution were most clearly and forcibly laid down. "The supreme law of the land," said the Justice, "now declares that involuntary servitude, except as a punishment for a crime, shall not exist anywhere in the land."

But Justice Harlan, in the same opinion, pointed out that "involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not in any legal sense, either slavery or involuntary servitude." He was referring particularly to service in the army and navy. But is not service rendered in interstate commerce likewise a public service? Has not the nation the right to say

to the railroad workers, as suggested by the President, "You must not interrupt the national life without consulting us?"

The threat of a nation-wide stoppage of railroad traffic, that would strike at the very heart of our national existence, found the country unprepared to defend itself, and it brought home to everybody the necessity of finding a means of safeguarding the economic life of the whole country against the possibility of internal industrial warfare.

This is a problem that must be solved, and in its solution we must keep clearly in mind the rights and duties of all the parties at interest. The problem, it seems to me, is but another phase of the centuries-old conflict between private rights and public duties.

Railroad regulation has been an evolution. Our railroads grew up in an age when enterprise, initiative and energetic business ability had unrestricted opportunity for development. Unlike the railroads of Europe they preceded population and took the risks of pioneers in developing the country and settling it. In the early days we were too busy building the railroads to think much about regulation. But when the whole country became gridironed with steel rails and steam transportation became an integral part of the life of the nation, there developed our modern conception of the public character of these arteries of commerce and of the need of constructive regulation in the public interest.

The mandate of the people, through acts of Congress and decisions of the courts, is that the railroads must be continuously operated in the public interest—the public interest is greater than that of the individuals who own these properties, or of the individuals who earn their livelihood in the operation of them. And when the private rights of the railroads have come into conflict with their public duties, the public, through the courts, has declared that public duties are greater than private rights. To the railroads the public says: "You must operate continuously, under such regulation as we provide, and under such tariffs as we approve." Yet, to the two million of our citizens who are actually engaged in this public service—and without whom it could not be conducted—the public has neglected to issue any instructions. It has failed, in other words, to mark the difference between the private rights and the public duties of the employees.

The unfortunate controversy of last August brought vividly

before the country the weakness of a system of public regulation of railroads, which fails to provide insurance against a paralysis of the internal commerce of the nation. The crisis came. The President felt compelled to intervene in the public interest. And when he attempted to intervene he found that the existing machinery of voluntary arbitration was inadequate to avert the threatened trouble.

It may, indeed, fairly be asked, Is not this unrestricted right of the railroad employees to quit work in a body a menace to the public welfare? Does not the individual who chooses to earn his livelihood in the public service of transportation assume a duty to help keep open these vital arteries of commerce—a duty greater than the private right to strike?

A member of the Interstate Commerce Commission, Judge Clements, recently expressed the opinion that railroad employees are affected with a public interest that they can no more ignore than can the carriers, and he suggested that there should be a legally established obligation upon these employees not to interrupt the service by strike until the justice of their demands has been determined by some public tribunal. Such a definition by law of the public duties of railroad employees must have been in the mind of the President when he told a gathering of business men recently that "the business of government is to see that no other organization is as strong as itself; to see that no body or group of men, no matter what their individual interest is, may come into competition with the authority of society itself."

"America is never going to say to any individual," the President declared, "'You must work whether you want to or not,' but it is privileged to say to an organization of persons 'You must not interrupt the national life without consulting us.'"

If the all-embracing commerce power under the Constitution covers railroad wages as well as railroad rates, then the way is open for Congress to turn the whole problem of railroad wages over to the Interstate Commerce Commission, or, as has been proposed by eminent publicists, to an Interstate Wage Commission, working in cooperation with the Commerce Commission. It may be that something such as this will be the ultimate solution of the railroad wage problem—regulation of wages by the same government commission, or an ancillary one, that regulates railroad rates.

When it is considered that nearly two-thirds of the cost of railroad operation is the wage bill, it is seen how closely related are the considerations of railroad rates and the amount of the wages which the company must pay to its employees.

No matter what remedy is finally adopted by Congress for safeguarding the nation against the sudden interruption of interstate commerce, there are many strong advocates of a plan for continuous oversight of railroad labor conditions by a permanent body of expert commissioners—men of the same high attainments and integrity as the men who make up the Interstate Commerce Commission.

We are at the parting of the ways. One road before us is a continuation of the system of unrestricted private wage bargaining that eventually leads to settlement by force. The other road is a restriction and regulation of private wage bargaining in order to give fuller protection to the rights of the public—trial by jury instead of trial by brute force.

This is a problem in which all of us, as American citizens, have a vital interest. I have endeavored to state the facts without prejudice. I am not an advocate of any particular plan, but I am an advocate of industrial peace—not peace at any price, but peace that will insure the best possible wages and working conditions for our employees together with the highest efficiency in the operation of our transportation systems.

There must be, as President Wilson has so well said, "a full and scrupulous regard for the interest and liberties of all concerned."

I am in favor of an investigation, rather than an inquest. I believe there should be an inquiry by some properly constituted tribunal into the facts of a wage dispute before there is any resort to force, rather than an inquest after the trouble has been made and the damage done, to learn the causes of the disaster.

I am not prepared to say that all wage problems on the railroads should be placed unreservedly in the control of a public commission, but I do believe that when a controversy between the managements and the men reaches a stage where the interests of the public are imperiled, that then there should be a peaceful settlement and a judicial settlement, that will conserve the public interest as well as the rights of the parties to the controversy, and if it is finally determined that any body of men be required in the public interest to subordinate their private

rights to their public duties, it should be with the full understanding that their private rights must be in every way safeguarded by the public.

## AN INDUSTRIAL PEACE PLAN<sup>1</sup>

The fact that the United States has given to the world a peace plan—embodied in thirty treaties with governments representing three-quarters of the population of the world and in the covenant of the league of nations (described by the president as “the heart of the covenant”)—makes it worth while to consider whether the plan may not be employed for the settlement of industrial disputes. I venture to add, if I may be pardoned, that I advocated the plan as a means of settling industrial disputes some fifteen years ago, before I thought of applying it to international controversies.

In all disputes there are three factors that enter into the selection of a remedy: First, the disposition of the parties; second, the recognition of the need for a remedy; and third, the machinery through which the desire for a remedy can find effective expression.

We may assume the existence of a desire, practically universal, for the peaceful settlement of all disputes between labor and capital. Even in international affairs there is no doubt that a large majority of the people of all civilized nations oppose war except as a last resort. They prefer peaceful means to the arbitrament of war, but it is difficult for the popular will to find expression.

Secret diplomacy has concealed the earlier stages of international controversies so that the people relied upon to do the fighting have been kept in ignorance until a sudden call to arms paralyzed the peace sentiment and subjected those who protested to the charge of treason. Then, too, long-standing race prejudices, prejudices between nations, and sometimes, religious prejudices, have made it easy for militarists to inflame the passions that developed local clashes into armed conflicts. Manufacturers who make fortunes out of war contracts are quick to take advantage of the ignorance of the people and of popular passions, and their profits are so large that they can, when they

<sup>1</sup> William J. Bryan. *The Commoner*. 20:3. January, 1920.



find it necessary, control such newspapers as are purchasable. To these disadvantages under which the masses labor may be added the undemocratic character of many governments and the political influence of the military parties.

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The hope of universal peace rests upon the progress now being made along all the lines above mentioned. Secret diplomacy, or at least the secret treaty, is abolished by the league of nations; prejudice will decrease as general intelligence increases and as a reduction of armaments lessens the force of the appeals made by militarists and manufacturers of munitions, while the growth of democracy constantly increases the relative influence of the average man in his government. And possibly the greatest change of all is the appearance of woman in the arena of politics, with her attachment for the home to inspire her to combat war, the enemy of her home.

The league of nations is launched upon the world at a most auspicious time. The late war, surpassing all previous conflicts in its cost, whether measured by blood, by expenditure of money, or by the mortgage that it lays upon the toil of future generations, has convinced the world that something must be done. The people everywhere are calling for machinery through which the desire for peace may find expression.

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The league of nations furnishes the machinery, and, fortunately, the leading nations had been prepared for the plan by their recent agreements with the United States providing for investigation of all disputes of every kind and character before a resort to war. Whatever differences may exist as to the details of the covenant, a league of nations, established for the purpose of settling all international disputes by peaceful means, is one of the certainties of the future.

Likewise, in the matter of industrial disputes at home, we may assume, I repeat, that the sentiment is practically unanimous in favor of a peaceful settlement of such controversies. The strike and the lockout are, in the field of industry what war is between nations. Each is an attempt at compulsion; one seeks to force the employer to terms by shutting off the labor supply and the other attempts to force employes to terms by withdrawing the opportunity of earning a livelihood.

Neither can be regarded as desirable, even by the side that



employs it; it is in the nature of a last resort and is only employed when argument fails. And, even if the strike and the lockout were desired by either party to the dispute, or by both parties, what of the third party—the public? No strike can DIRECTLY affect any large percentage of the people, but the indirect effect may reach every one.

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Take three strikes as illustrations. The coal strike, which threatened to paralyze a great basic industry and shut off the supply of fuel at the beginning of winter, directly concerned a few thousand mine owners and something like a half million mine workers, but it indirectly reached the firesides of a hundred millions of people and the furnaces that furnish power for all our factories. The steel strike, with a comparatively few stockholders and few hundred thousand employes, has partially paralyzed many branches of industry and indirectly laid tribute upon a multitude of homes.

At one time a railway strike seemed possible; that would have immediately touched the pocket nerve of capitalists who control twenty billions of railway stocks (partly water) and railroad bonds, and would have suspended the earning capacity of nearly two million persons, but it would have greatly inconvenienced nearly fifty times as many who patronize the railroads. The public, like the innocent bystander, gets hurt, even though the actual combatants are few in number in proportion to the entire population. A whole nation desires peace in industry, and the recent strikes and rumors of strikes have directed public attention to a great need, made apparent by society's helplessness.

Now is the opportune time to consider an industrial peace plan. The harvest is ripe, the reapers are waiting; machinery is the need of the hour. The peace plan, that has made remote the possibility of war between us and the contracting nations and now promises to hasten the coming of universal and perpetual peace throughout the world, would seem to offer the easiest means of settling labor disputes before they reach the strike or lockout stage. The plan is simple; it provides for a public investigation before resort to any attempt at compulsion on the part of either capital or labor.

Compulsory arbitration does not meet our industrial needs any more than it does our international needs. Before we

adopted the plan providing for investigating all international disputes we relied for security on our arbitration treaties, twenty-six in number, which provided for the arbitration of minor questions; but these treaties specifically excluded from arbitration questions of honor and independence, vital interests and the interests of third parties—the very questions out of which wars grow. The peace plan upon which we now rely closes the gap and leaves no dispute out of which a war can grow until after a period of investigation sufficient in length to permit passions to subside and questions of fact to be separated from questions of honor.

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So, in industrial controversies, we cannot compel employers to pay wages that will be destructive of their business, neither can we compel wage earners to work for insufficient pay—the one would be confiscation and the other slavery. And, in the arbitration of industrial disputes, it is really a gamble upon the bias of the one man who decides the controversy. Arbitration boards are usually made up of representatives of the two sides about equally divided, with one man, supposed to be impartial, but—as no one is or can be absolutely impartial in such matters, everything depends on which side secures the umpire.

I am aware that there are some who will contend that every man OUGHT to be impartial but that which SHOULD BE is sometimes imaginary rather than real. We have to use the material we have; we cannot expect to find perfect men when we are in search of arbitrators. If we had any perfect men in this country they would be in such demand for permanent public duties that they could not be spared for the occasional work of preventing strikes.

But, while compulsory ARBITRATION is as impossible as it is undesirable, compulsory INVESTIGATION is not only defensible, but unobjectionable. Public opinion is the final arbiter in all matters in a government like ours—that is, public opinion intelligently formed upon all the facts involved; and how can the public form an intelligent opinion until it is in possession of the facts?

The time has passed when either side to a great industrial controversy can demand judgment on a one-sided statement of the differences. However convinced it may be of the justness of its cause, neither side can foreclose discussion and demand

an immediate verdict in its favor. While every one has a general bias on one side or the other, the great majority of partisans are open to conviction and desire to hear both sides before the jury is polled.

The peace plan proposed meets all the objections that can be raised to compulsory arbitration, provides for the fullest investigation, and assures representation to both sides. The commission contemplated by the plan should be a permanent board of, say, three members; two should represent the two classes, employers and employes, and the remaining member should be so disconnected from the two classes as to reduce his bias to a minimum. He should be free from business or social obligations to either side, so that he can represent the public rather than the parties to the dispute.

\* \* \*

The commission should be empowered to investigate upon the request of either party, and should have authority to act on its own initiative in case the feeling on both sides should restrain the parties from making a request, and it should have ample power to call witnesses and compel the submission of papers, books, etc., bearing on the case. In each case investigated two members should be added to the board, one chosen by each side, to serve during the investigation, with authority equal to the permanent members and with equal prorata compensation.

This would insure a minority report if the investigation resulted in a disagreement, and each party to the dispute would have its side fully presented. As the report would not be legally binding upon either side, but rest upon its merits, the members of the commission would be even more apt to strive for equal and exact justice than they would if, by their findings, they could settle the question on the side to which they lean.

With such a tribunal always ready to act, the parties to the controversy could be restrained from strike or lockout for a reasonable time, while the commission is investigating just as under the peace plan the contracting nations agree not to resort to war until after investigation.

Public opinion would support the majority report and thus compel a settlement in accordance therewith, unless the reasons given by the minority members appealed more strongly to the judgment of the public. The creation of such a tribunal would

not only furnish the machinery necessary and prevent strikes and lockouts in nearly every case, but the very existence of such a tribunal would tend to restore harmony between the two classes, just as an anticipated strike or lockout tends to create discord.

Such a tribunal, based upon fair principles and giving equal consideration to the claims of both sides, would also tend to cultivate confidence in the government and a respect for law, while it would, on the other hand, silence those who seek a pretext for declaiming against organized government.

I submit the plan (it can be used by states and by communities as well as by the nation) in the belief that it will contribute towards the end which all good citizens have in view, namely, the proper use of a people's government for the protection of the rights of each citizen and the promotion of the welfare of all.

## BRIEF EXCERPTS

We can not and should not, as a people, tolerate the possibility of a repetition of the Chicago railway strike of 1894, or the anthracite coal strike of 1902.—*Adams and Sumner. Labor Problems.* p 326.

The state and federal governments should provide the machinery for what may be called the Compulsory Investigation of controversies when they arise.—*Report of the Anthracite Coal Strike Commission of 1902.*

It would not be slavery to limit the right of even an individual to stop work on a public utility any more than it is slavery to make it illegal for a sailor to desert his vessel in the midst of a voyage.—*Outlook* 114: 783. December 13, 1916.

Under [voluntary] arbitration in Canada about three per cent of the cases were settled by peaceful processes without the cessation of work. Under the new law [Industrial Disputes Investigation Act] ninety-seven per cent have been settled peacefully without cessation of work.—*Outlook.* 94: 648. March 26, 1910.

Policemen and others, whose duties relate to the administration of justice and the preservation of life and property, should not join, or retain active membership in, or be affiliated with

organizations that resort to the strike. This conclusion is based upon the principle that they should be above any suspicion in the public mind of partiality in the discharge of their official duties.—*Report of the [second] Industrial Conference called by the President, March 6, 1920. p. 43.*

I favor compulsory investigation, believing that the public, when properly informed, would settle all of these great questions between capital and labor.

I repeat that when the facts have been disclosed as to the controversy that exists between capital and labor, between owners and railroad employees, I think the strike will proceed no further because the party at fault would necessarily have to surrender to force of public opinion.—*Senator Charles E. Townsend. Congressional Record. December 17, 1919.*

The public's right to uninterrupted street car service is paramount to every other consideration involved. Regardless of the justice or injustice of the employes' present demands, they should not be privileged to tie up local transportation in order to enforce them. A street car or railroad strike represents the effort of a small group to club the public into supporting their demands—an example of intolerable minority rule. Regardless of what the law may say, employes engaged in such an occupation as the operation of railways have no moral right to prostrate the transportation of a nation or a community, provided that machinery has been established to give them ample hearing.—*Cleveland Plain Dealer. April 30, 1920.*

The Industrial Disputes Investigation Act seems to be gaining support in Canada with longer experience, and has very few opponents outside of labor ranks. The labor opposition is strongest where socialism is strongest. There seems to be less unqualified opposition to the law among the members of the unions than among the officials, but this is stated as a conjecture rather than as an assured fact. The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied law with impunity.—*Victor S. Clark. Bulletin. U. S. Bureau of Labor. 20:29. January, 1910.*

No effort has been in the past to punish a large body of men for striking. This raises the question of the value of the penal provisions of the law. It is argued that if the act does



not put strikers in jail and subject offending employers to heavy fines, these provisions are useless. But even though violations are seldom prosecuted, neither strikers nor employers dare defy the law of the land in disputes prominently before the public and affecting the prosperity and comfort of a large body of citizens. By doing so they would put a powerful weapon in the hands of their opponents, and they would fatally prejudice their case in the high court of public opinion.—*Victor S. Clark. Proceedings of the Academy of Political Science*, 7: 15-16. January, 1917.

The employes' right to strike and the employer's right to lock out his employes are both secondary to the public's right to service. Since the public interest is paramount, it follows that public opinion is, and should be, a potent influence for the settlement of labor disputes. Therefore, machinery should be set up to develop and crystallize this opinion according to established facts, and until these facts have been established neither party should resort to strike or lockout. In essential industries, government services and public utilities prompt settlement of disputes should be effected by the efforts of both parties. The public's right to uninterrupted service during the period of settlement is a primary consideration.—*From Declaration of the Cleveland Chamber of Commerce. Survey*, 43:749. March 13, 1920.

So far as the strike in general industry is concerned there is general concession that it is a legitimate and, within bounds of moderation, even an essential instrument of self-defense and advancement under the competitive system of private industry. But in another field the strike takes on a darker coloring. In public service and in industries the continuous operation of which is essential to public safety, the strike becomes a form of action with which the public must concern itself for self-preservation. Democracy cannot survive if it is to be constantly at the mercy of a small minority. It ceases to be a democracy under such conditions and falls prey to a new form of autocracy or oligarchy. Our political liberty becomes as nothing if it cannot protect society from this.—*Chicago Tribune*, March 21, 1920.

It will be necessary sometime to put the railway services in a position where the concerted strike will be impossible. Railroads are of just as essential a public character as are forces of



policemen and firemen, or the postal clerks and carriers. The strike is not a proper weapon to be used by men in such employments. A concerted railroad strike would necessitate the operation of railroads by military power, in order to supply the people of cities with food and other necessities. Since, however, the strike is not morally permissible under these circumstances, there is the more reason why the public should see that railway servants have exceptionally good treatment as regards wages and all conditions of employment and service. On reasonable terms, and at proper intervals, they should have opportunity to secure arbitration of all well-formulated claims and demands.—*Review of Reviews*. 48:146. *August*, 1913.

PROCEEDINGS UNDER THE INDUSTRIAL DISPUTES INVESTIGATION ACT OF CANADA <sup>1</sup>

Calendar year	Number of applications	Number boards granted	Strikes not averted or ended
1907—(9 months)	25	22	1
1908	27	25	1
1909	22	21	4
1910	28	23	4
1911	21	16	4
1912	16	16	3
1913	18	15	1
1914	18	18	1
1915	15	12	1
1916	29	16	1
1917	53	37	1
1918	93	59	2
1919—(3 months)	9	7	0
	<hr/> 374	<hr/> 287	<hr/> 24

<sup>1</sup> Twelfth [1919] Report of the Registrar of Boards of Conciliation and Investigation. p. 76.

PROCEEDINGS UNDER THE INDUSTRIAL DISPUTES INVESTIGATION ACT OF CANADA, MARCH 22, 1907 TO MARCH 31, 1919<sup>1</sup>

Industries affected	No. of disputes referred under Act	No. of strikes not averted or ended
<b>I.—DISPUTES AFFECTING MINES, TRANSPORTATION, PUBLIC UTILITIES AND WAR WORK:—</b>		
(1) MINES:—		
(a) Coal .....	49	6
(b) Metal .....	17	5
(c) Asbestos .....	1	0
Total Mines .....	67	11
(2) TRANSPORTATION AND COMMUNICATION:—		
(a) Railways .....	126	7
(b) Street railways .....	55	3
(c) Express .....	7	0
(d) Shipping .....	16	0
(e) Telegraphs .....	9	1
(f) Telephones .....	4	0
Total Transportation and Communication .....	217	11
(3) PUBLIC UTILITIES:—		
(a) Light and Power .....	8	0
(b) Elevators .....	1	0
Total Public Utilities .....	9	0
(4) WAR WORK .....	30	1
Total Mines, Transportation, Public Utilities and War Work.....	323	23

**II.—DISPUTES NOT FALLING CLEARLY WITHIN THE SCOPE OF THE ACT:—**

* (a) Public Utilities under Provincial or Municipal Control .....	28	1
(b) Miscellaneous .....	23	0
Total disputes not falling clearly within the scope of the Act.....	51	1
Total all classes .....	374	24

<sup>1</sup> Twelfth [1919] Report of the Registrar of Boards of Conciliation and Investigation. p. 75.

## NEGATIVE DISCUSSION

### STATEMENT OF SAMUEL GOMPERS<sup>1</sup>

Mr. Chairman and gentlemen of the committee, of the subject of a general investigation into the cost, into the subjects of rights, operation, constitutional guaranties, and all there can really be no objection. I have in mind the fact that at a meeting of the executive council of the American Federation of Labor a resolution was adopted pledging the brotherhoods the cooperation and support of the American Federation of Labor in the effort to establish the eight-hour workday in the railroad service, and another resolution adopted by our council against any form of compulsory arbitration with compulsory award, or in any way that would take away from the men of the railroad service the rightful ownership of themselves.

The individual, industrially, has lost his individuality in modern times. He is simply a cog in the great wheel of industry, and all of the workers, as cogs, operate in cooperation with each other, and when that is true individual right is gone. How can individual workmen resent, or an individual workman resent, any wrong or injustice?

The man who works on a railroad for a long time, as a rule, is unfitted for any other service. He has got to apply for work in the railroad service upon other lines, and with the combination of the managers of the railroads an individual workman has a splendid chance of establishing and maintaining his industrial rights.

I understand the purpose—that is, if enacted into law the men will be stayed from acting in concert until the commission has made its investigation. But in the meantime concerted action to stop work is unlawful and punishable.

In other words, an American citizen, American workers, have the right not to be compelled to work against their will.

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<sup>1</sup> Statement of Samuel Gompers, President of the American Federation of Labor, at the hearing of the Senate Committee on Interstate Commerce, August 31, 1916.

Involuntary service can not be enforced under the Constitution of the United States, and yet when 5, or 10, or 500 or 5,000 propose to exercise their constitutional, guaranteed right to do a thing it is made unlawful, and they are compelled to give involuntary service.

Now, Mr. Chairman and gentlemen, that may be a very fond wish to tie men to their work, but we have been taught something in these United States, both as natives and as naturalized citizens; that is, that there are some rights to which the masses of the people are entitled, and I can not conceive of their giving up those rights without a protest, an emphatic protest. You may make strikes illegal, may make strikers criminal, but you are not going to avert strikes when strikes are necessary in order to express the needs of America's workers for a higher and a better consideration of their rights and of standards of the service which they give to society and without which society itself is imperiled.

The experience of the countries that have attempted compulsory arbitration and the enforcement of a compulsory award, the experience of countries in which compulsory investigation and the stay of the workers from quitting their employment, has been all to the detriment of the principle in itself of compulsion and a denial of the right of the workers to leave their employment.

In the Australasian countries the effort has gone to the furthest limit, and I may say to you gentlemen that the Australian compulsory arbitration act was put into existence after a strike almost analogous to the position now before us, except that this is attempted before a strike, before a proposed strike, and out of the desire to tie the men to their work; out of a desire, by law, to make strikes and lockouts impossible—the denial of rights guaranteed not only by time and Constitution but by common concept have been taken away.

In Colorado there exists a law that makes it unlawful for men to strike pending an investigation of the dispute. That law has been not only abortive in preventing strikes, it has not only injured the interests of the workers and interfered and denied their rights, but it has resulted in a revolution of feeling to such an extent that at the convention of the organized workers of Colorado, the Colorado State Federation of Labor last month passed a resolution, with but one dissenting vote,

against the proposition, demanding the repeal of that law at the hands of the legislature of that State.

I have a copy of the Colorado State Federation of Labor resolutions and I submit it as part of my remarks.

**RESOLUTION ADOPTED BY THE TWENTY-FIRST ANNUAL CONVENTION OF COLORADO STATE FEDERATION OF LABOR, DECLARING FOR THE REPEAL OF THE INDUSTRIAL-COMMISSION LAW.**

The rights and liberties of the wage earners of the State of Colorado have been invaded and usurped by the enactment of the industrial commission law. The extensive powers and authority conferred upon the three commissioners provided for in this law transcends and overshadows the power and authority conferred upon all other political departments of the State.

The thirteenth amendment to the Federal Constitution provides that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." In contravention of this amendment, and in defiance of the specific declaration against slavery and involuntary servitude, the twentieth General Assembly of Colorado passed the industrial-commission law, which makes it a misdemeanor for employees not to give at least 30 days' notice to the industrial commission when a change affecting conditions of employment with respect to wages and hours is desired, and provides that any offender shall be punished by a fine.

With an assumption of power unparalleled in the annals of legislative history, the industrial commission was clothed with the power and authority to override and set aside the first amendment to the Federal Constitution, which provides that, "Congress shall make no laws \* \* \* abridging the freedom of speech or of the press or of the right of the people to peacefully assemble and petition the Government for redress of grievances. In defiance of this amendment the Colorado General Assembly empowered the industrial commission to forbid any person "To incite or encourage in any manner any employee to go or continue on strike contrary to the provisions of the industrial-commission law," and provided a penalty of fine and imprisonment should such employee exercise his rights under the Federal Constitution.

The law further empowers the industrial commission to invade the meetings of wage earners, thus destroying the right of free assemblage.

The industrial commission is given the further power of exercising unlimited authority over the various departments of the State government which either directly or remotely deal with the conditions, health, or activities of the wage earners of the State.

The American Federation of Labor has, during its entire existence, exercised its great influence against the delegation of any of the personal rights of the working people to political commissions, for these rights are fundamental and deal with their lives and liberties.

Government by commission is not a government of or by the people and is a menace not only to the welfare of the wage earners but to the people as a whole.

The industrial commission is not directly responsible to the people of the State, and the power and authority placed in its hands is not in consonance with the spirit of a republican form of government.

The fundamental reasons underlying the organizations of labor are found in the almost universal injustice inflicted upon the wage earners. Alleged economists, unfair employers, scheming politicians and corrupt courts have sought, by their machinations and specious arguments, to define labor power as property or as a commodity. The Sherman anti-trust law, passed in 1890, was framed for the specific purpose of regulating aggregations of capital, but labor organizations were the first attacked as illegal combinations in restraint of trade. For 24 years the American Federation of Labor heroically fought to secure legislation containing a specific provision drawing a clear line of demarcation between human and property rights. The passage of the labor provisions

of the Clayton antitrust law, containing that now famous declaration, "The labor of a human being is not a commodity or article of commerce," was the result of its efforts to restore to the wage earners their rights guaranteed to them under the Constitution of the United States.

Almost immediately following the passage of this Federal law, the Colorado General Assembly placed upon its statute books the industrial-commission law, which arrogantly defies the legislation enacted by the Federal Congress.

The laboring people of the State of Colorado do not propose to submissively submit to this invasion of their rights. We resent the imputation that we are not loyal citizens of the United States and of the State of Colorado, and that it is necessary that we be restrained from exercising any right guaranteed to every other citizen. Upon every page of history there is written the wrongs committed against labor, and wherever it has had the courage and independence to assert its rights and to exercise its economic and political power, there has always followed subtle schemes of which the industrial-commission law is a counterpart, to deprive the wage earners of their rights and liberties.

So far the power conferred upon the industrial commission has been cautiously employed, with the evident purpose in view of securing the support of the wage earners. With adroitness and clever argument the industrial-commission law has been advertised in other States by its supporters as a new solution of the labor problem. The men and women of labor, whose bodies bear the imprint of industry's scars, are assured that their rights, liberties, and interests are safe in the hands of this political commission. The wisdom and judgment of the officials of labor, acquired by long experience, are lightly waived aside by these new guardians of labor's vital interests. Already flushed with the wisdom of still greater power, the industrial commission, through its votaries, are clamoring for still more power, although, according to the terms of the law, every statute in the State which relates directly or indirectly to labor comes under the power and authority of the industrial commission.

Therefore, it is plainly evident that the organized labor movement of the State of Colorado must immediately prepare to protect itself against this invasion of its rights and liberties. The continuation of the industrial commission law will eventually strip from the workers of this State every right which they now enjoy, and will destroy the independence of the trade-unions and make of the working people mere vassals.

The industrial commission has already made a record which challenges the fundamental principles of the American Federation of Labor.

The industrial commission law places in the hands of three men (whose experience deprives them of a full or even a partial knowledge of the great struggle of the wage earners) the destiny of the working people of this State. In fact, our entire lives would be dominated and controlled by three men.

The influence which placed this law upon the statute books of the State of Colorado is the same influence that defied the eight-hour law in the coal mines and was responsible for the coal miners' strike.

It is the same influence that denied the right of organization to the coal miners of the State.

It is the same influence that made it necessary for Congress to select a special committee of investigation to bring to public light the indignities and the brutality exercised by the coal operators in the southern fields.

It is the same influence that sought to sacrifice the life of John R. Lawson because he championed the cause of the striking coal miners.

It is the same influence that snuffed out the lives of the women and children of Ludlow.

It is the same influence that caused the present governor of this State to declare in the public press that if the smelter men on strike in Leadville continued their protest, the military arm of the State would be employed to drive them back to work.

It is the same influence that converted Huerfano County into a caldron of corruption, and rendered unsafe the lives of its citizens, unless they blindly submitted to the absolute dictation of corporation gunmen.

It is the same influence that sought to prejudice the minds of the citizenship generally by publicity bureaux.



It is the same influence that is employing every effort to securely fasten this law upon the wage earners of this State in order that its influence may play its part in subjugating the workers of other States.

In fact, the wage earners of this State are fully cognizant of the reasons for the introduction and passage of this law, and the influences and desires of those who were responsible for its enactment.

In the light of these facts, and with a full confidence in the courage, loyalty, and ability of the wage earners of this State, the State federation of labor, in twenty-first annual convention assembled, does hereby declare:

That the workers will not relinquish the right to strike whenever and wherever that course may be deemed advisable by the men and women of labor. The right to strike is the only distinguishing mark between free men and slaves, and we shall unflinchingly make every sacrifice to retain our freedom.

That we shall resist to the uttermost any attempt upon the part of the industrial commission to wrest from us any of those rights and liberties guaranteed by the organic law of our country.

That the unqualified repeal of the industrial-commission law, every section and paragraph, shall be made the paramount issue of the coming campaign, and that we shall hold to strict accountability the men and political parties of Colorado who and which ask for the suffrage of the citizens of our State.

That the workmen's compensation law be amended in such a manner as to provide for officers to administer that law.

Conscious of the great wrong committed in attempting to deprive the wealth producers of this State of their rights and liberties, yet undaunted in our fight for justice, freedom, democracy, and humanity, we confidently submit our course to the sympathetic consideration and co-operation of our fellow workers and fellow citizens of Colorado.

Adopted August 17, 1916.

In Canada, under the law of which the pending bill is properly a replica, Mr. Garretson has already referred to several instances. Let me say, in one instance an American officer sent the benefits provided by the constitution of the United Mine Workers of America to the representative of the general organization in Canada, and when he undertook to pay these coal miners the benefits for which they had contributed before any trouble arose, he was haled before the courts and punished.

At present in Hamilton, Ontario, the machinists are on strike to enforce an award under the act and compulsory investigation and expression of opinion of the commission. The commissioners refused publicity even to the conditions of the investigation and the conditions of labor.

The Hydro-Electric Co., of Toronto recently rejected an award. The electricians struck to enforce the award, and, because of the time the companies had to gather strike breakers and to prepare for any eventuality, the men were defeated. It may not be amiss to say that in Canada this compulsory investigation act, a stay of the rights of the workers to leave their employment, is not called by the name of its author; it is no longer called the LeMeaux act; it is called the "lemmon act."

Now, I think that I have the right to say that I have, with my fellows, endeavored to be of service to our people and to help avoid and evade strikes and industrial conflicts. I think I am justified, without any appearance of vanity, to say that I have contributed something, that I have contributed as much as any other man in America to try to avoid strikes. Mr. Chairman and gentlemen, there are some things that are worse than strikes. Manhood which has been deteriorated and undermined when it comes to the question of giving compulsory service is of far greater importance than a strike. The history of the world for centuries has been to make the workers free. The four years of Civil War, costing hundreds of thousands of the best blood of our country at the time on both sides was fought out in order that slavery should be abolished.

What is the difference between a slave and a free workman? The slave must work when his master wills, and when the State behind the master directs and enforces that will and whim. What constitutes freedom of men that work except that they own themselves and have the right to determine when they will or will not work?

I do not undertake now, and will not undertake at any time, to underestimate the suffering which will come to many and the inconvenience which all will suffer if a strike is inaugurated on the railroads. But I ask you gentlemen—we have got to live as the Republic of the United States when that strike is gone and is over and it is a part of history—shall we then find upon the statute books of the United States a law that for one moment declares that a man may not fold his arms and say, "I will not work," or to find that when he and two or more others shall agree that they will fold their arms, that thereby they have become criminals and susceptible to be tried and convicted and sentenced to imprisonment? Such a condition is intolerable and in conflict with the principles of a free republic.

I trust that this legislation will not be enacted by the Congress of the United States. It is too serious a question. It is so fundamentally repugnant to every conception of human liberty that the Congress of the United States should stay its hand and not attempt to go back—go back to its history since its existence in so far as white workmen are concerned, and since the proclamation of independence and the adoption of

the thirteenth amendment to the Constitution of the United States abolishing human slavery.

The interpretation of the Sherman antitrust law by the courts of our country by which that law was made applicable to the voluntary associations of the workers, organized not for profit, has been reversed by the solemn enactment of certain provisions in the Clayton law and the phrase, though it may be seemingly a phrase, yet the phrase is a declaration enacted into the law of the United States, the first sentence of section 6 of the Clayton Act declares that the labor of a human being is not a commodity or an article of commerce. That language is quite familiar to the Senator who sits at your left, Mr. Chairman—Senator Cummins; it is his language which was incorporated into that law. And you undertake by the provisions of this measure now under consideration to repeal in effect that declaration and the provisions of that law, and you make of the labor of a human being a commodity or an article of commerce, and undertake to determine by law, with all its punishment, that the labor of human beings shall be regarded as a commodity and be held in abeyance and stay, the human being to stay his activity, and compel him to work for a particular period against his will.

I ask you, gentlemen, under the provisions of the bill—I anticipate that, of course, its provisions are subject to change and to meet any technical objection which may be urged—I am not urging the technical objections; I am urging fundamental objections.

We shall suppose—and I hope I shall not have justification for verification—that you will enact this law, and you say that the companies and the men shall stay their activities and not act in concert, but each for his own side—that is, to inaugurate a lockout or to inaugurate a concerted cessation of work. Now, take any of the railroad companies, or all of them, if you please, and the president and the vice presidents and the general managers and the superintendents shall, after you have enacted the law, resign rather than obey the provisions of the law. They will not inaugurate a strike or a lockout, but they will resign their positions. Is there any law that you contemplate putting upon the statute books compelling them to give their services to the companies? Can you enact a law that will prevent them from resigning their positions? And yet it

is contemplated that if the men in the active service of operating the railway trains, that if they resign they are amenable to the law.

Gentlemen, in my judgment (and a judgment not biased or confirmed, but one the result of a lifelong experience of this great industrial problem) you are going the wrong way in trying to accomplish a desirable result—to prevent and avoid strikes and conflicts of this character. You are not going to prevent them, I repeat. But bear this in mind, gentlemen, that there is now going on over the whole civilized world a movement by which the workers, the masses of the people, are determined that they shall have a larger part in the activities and the privileges as well as the responsibilities of life—a development which is coming and is now at our doors. There is but one tangible way in which this can be accomplished, and that is through a larger intelligence and cohesiveness among the masses of the people. A new order—the concept of human rights and human welfare and the full recognition of equality and equality of opportunity—must be recognized.

## OPINION OF THE AMERICAN FEDERATION OF LABOR<sup>1</sup>

The two essential features of the President's legislative proposals were the eight-hour workday and compulsory governmental institutions to regulate industrial relations in an occupation not owned or operated by the government itself. The representatives of the railroad organizations felt the seriousness of the situation which confronted them. The proposal to establish compulsory institutions is a matter that involves and affects the interests of all the wage-earners in the country. It is a revolutionary proposition totally out of harmony with our prevailing institutions and out of harmony with our philosophy of government. The representatives of the Railroad Brotherhoods asked for a conference with the representative men of the A. F. of L. then in Washington. This conference was the first held in the A. F. of L. new office building. Its importance is evident. In that conference the Railroad Brotherhoods were again assured of the support and the cooperation of the A. F. of L. in

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<sup>1</sup> Report of the Executive Council, American Federation of Labor, to the Thirty-Sixth Annual Convention, November 13, 1916, p. 67-9.

their struggle, and in the hearing which took place before the Senate Committee on Interstate Commerce August 31, upon the legislation which President Wilson had recommended for enactment by Congress, the wishes and the demands of the wage-earners were presented by the representatives of the railroad organizations and by the President of the A. F. of L. The eight-hour workday was secured for the railroad men but the proposition providing for "compulsory investigation" carrying with it compulsory service, was not enacted.

The bill introduced in Congress for the declared purpose of preventing strikes and interruption of transportation, is modeled after the Canadian Compulsory Investigations Act. It provides that during a period when the demands for changed conditions are under consideration it would be unlawful for the railroad workers to strike. During this specified period it is the purpose of this law to compel railroad men to work even against their will.

This effort to again subject wage-earners to involuntary servitude has aroused the determined resistance of wage-earners generally. To their declarations against involuntary servitude the proponents of the legislation have replied that although a strike would be made illegal under the proposed law and strikers criminals, yet individual workers were not deprived of the right to quit work.

This is a curious kind of reasoning that may make an appeal to those who have no definite knowledge of industrial conditions, but wage-earners know that individuals have ceased to exist from the standpoint of modern industry. The individual worker is a mere cog in industrial machinery, without voice in determining conditions that affect his work or his relations with his employer, and for an individual to quit work would have no effect at all except to leave him without employment. The individual worker has neither the power nor the opportunity to secure redress for his industrial wrongs or to establish justice.

It is only through organized effort that wage-earners have the rights and opportunities of individuals or have any hope to establish better industrial conditions and standards of industrial justice. It is pure sophistry that only augments the sense of injustice that wage-earners may feel for industrial wrongs to allow them by the law the right of individuals to quit work and to declare that they can not agree with fellow-workers, that conditions are so bad that their only hope of justice and fair



dealing lies in agreeing together to quit work, that is, to refuse to perform their usual tasks—to strike.

The distinction between slaves and free men is that slaves must work as their owners will. They have no will of their own which they can enforce. Free men are masters and owners of their own labor power. They can not be compelled to work against their will. The exercise of their right not to give service is at their own peril, that is, loss of wages with what they may entail.

Such a law providing for making criminals of men who cease work during the period of compulsory investigation of industrial disputes would not prevent strikes. It would only make strikes illegal and strikers criminals. It would revive again the old conspiracy laws.

The only protection that wage-earners have is the right to withhold their labor power—the right to strike. To deprive them of this protection in the name of industrial peace would only result in increasing their feeling of injustice and in converting governmental agencies and institutions into agencies that bind them powerless against employers, however rapacious and inhumane.

Compulsory institutions to prevent strikes are not new. They have been tried in other countries and found wanting. New Zealand established compulsory arbitration in 1894 after the close of a maritime strike that practically stopped transportation on the island. The compulsory arbitration law was a desperate effort to protect the so-called public.

But strikes have not been abolished in New Zealand; many bitterly fought strikes have occurred. It was only last year that another general strike occurred, again tying up transportation agencies. This strike was characterized by the most cruel and brutal conduct on the part of the so-called public. Many farmers joined gunmen, gangsters, and professional strike-breakers, armed themselves with pitchforks and other agricultural implements and marched against the striking workmen.

Compulsory institutions either in the form of arbitration or wages boards have been established in all of the states of Australia and for the Commonwealth, but in none of the states or in the Commonwealth have strikes been abolished or is there any reason to feel that this principle has solved the industrial problem.



The wage-earners of the United States will oppose any proposition to impose upon them compulsory institutions which disguise involuntary servitude. They hold that the principle involved in voluntary institutions is the key to personal and industrial freedom and that this principle is of more importance to them than any other consideration.

The immediate problem involved is a class problem but the principle involved in compulsory institutions, even for a class in our Republic, is of concern to the whole Republic, for we know that the Republic can not be maintained part free and part slave.

Involuntary and compulsory labor once enforced, even for a single hour, will not halt at its temporary enforcement but will go on and become permanent.

In human institutions when a wrongful course has been pursued it inevitably is held or driven on to its logical conclusion of error. There then is no retrieving except by a convulsion brought about by a revolution.

The human labor power which this law compels wage-earners to give to employers against their will is inseparable from the body and the personality of the wage-earners. It is part of the men and women themselves. They can not be forced to work for an employer against their wills without reducing them to the legal condition of slaves and transforming their minds and spirits into those of slaves. No more dangerous proposition has ever been proposed than this compulsory investigation measure.

Problems of industrial justice and redress for industrial wrongs can not be worked out by laws. Human relationships are involved and these can be adjusted on a basis of equity only through cooperation and mutual consent. Neither employers nor wage-earners can be forced by law to a state of mind and cooperation necessary for the protection of the rights and interests of the human element in production, transportation, and distribution.

The institutions for achieving industrial justice and industrial freedom must be agencies that permit of the freest and best development of the people, for establishment of justice and freedom come only through the growth and development of right thinking and right living so that opportunities for freedom and justice are used for the best interests of all.

In only one state of the Republic has there been a law providing for compulsory investigation of industrial disputes. That law was enacted in Colorado in 1915 and has been discussed in the following issues of the *American Federationist*: October, 1915; December, 1915; June, 1916; October, 1916.

As a result of their experiences under this law the trade unionists of Colorado in their convention held at Colorado Springs in August, 1916, declared emphatically against the law by practically unanimous vote—that is, with only one dissenting voice—and have pledged themselves to work for the repeal of the law.

It should be our aim to aid our fellow-workers of Colorado in their laudable purpose.

The action taken by the Colorado trade unionists in August is identical with that taken by the Canadian trade unionists in their Trades and Labor Congress held in September, 1916.

For many years those who were personally affected by the operation of the Canadian law have denounced the principle upon which it was based, but the opinion never became general enough in Canada to become the demand of the organized labor movement until the Canadian law had been extended by an administrative act to apply to a greatly increased number of workers in Canada.

The experience of the workers during the past year under the extended application of the Le Meaux Act resulted in a practically unanimous demand on the part of the Dominion Congress that the law be repealed.

This action of the Canadian trade unionists is dealt with in the report of the Secretary of the Canadian Trades and Labor Congress which is in the appendix to this report.

We recommend that this convention taken an unequivocal position against compulsory institutions and in favor of the maintenance of institutions and opportunities for freedom.

## STATEMENT OF A. B. GARRETSON<sup>1</sup>

The Canadian industrial disputes act was originally known as the "Le Meaux," and it is very largely referred to in that language on the other side. These four organizations [Railroad

<sup>1</sup> Statement of A. B. Garretson, President of the Brotherhood of Railway Conductors, at the hearing of the Senate Committee on Interstate Commerce, August 31, 1916.

Unions] exercise international jurisdiction. We have been Le Meauxed almost as often as we have been Erdmanized, and the consequence is we speak from knowledge and not from hearsay.

Our experience with the Le Meaux act is this: From the day it became effective I was in conference, and at a very crucial point, with the Canadian Pacific Railway. I was threatened with its provisions and it was so unknown to the president of the railway how it might work that that question was passed over on account of what he feared might come from the act. Afterwards he expressed his regrets to me that he had not waited and worked under it, while on the other hand I had burned a few candles before I learned what it meant. Here is what it has done: In 1910 Mr. Lee, of the Trainmen, and myself started the first of these collective bargainings in the East. We made the same demand upon all the railways east of Chicago and north of the Ohio River, including the Canadian lines east of Port William and Winnipeg. There were three Canadian lines, the C. P. R., the Canadian Northern, and G. T. About, I think it was, the 7th of January we commenced negotiations with the first line in the States. Our two Canadian vice presidents were assigned on the day following to take charge of the three Canadian properties, leaving 73 on this side of the line. There was no collective deal. We took up each line by itself. On the first line the Federal mediators were called in and effected a friendly settlement. We then settled the second property on exactly the same basis without any outside influence. On the third large line in the States we agreed to arbitrate, and the arbitration proceeding on that line consumed about 90 days. All of the other properties were handled individually. On the 19th day of July following we settled the last of the 77 properties in the United States, and on that night, at 6 o'clock p. m., the men left the service of the Grand Trunk road, and no one of the three is settled yet.

That was the effect of the Le Meaux act. The Grand Trunk road seized the opportunity to reenforce itself with the hope of utterly defeating the demand of the men, and it has been the record of every industry to which it has been applied that we are the only men on the other side of the line who conformed to its provisions. The other classes of labor utterly scorn acceptance of it unless they have an object to attain. They did not investigate. They struck and would let them

investigate afterwards. It is made of Canadian workingmen a nation of lawbreakers, and it has bred a contempt for the law that is a menace to good citizenship. Moreover, the minister of labor, who was the real author of that bill, W. L. McKenzie King, testified before the late Federal Industrial Commission that there were not jails enough in Canada to hold the men who had violated it.

There is indisputable testimony. Is it intended to make the American workingmen a class that have contempt for law, or is it intended by enactment to breed respect for the law? That is a question that you have to meet, because that phase of it is directly ahead of you, if such legislation is either contemplated or made effective. If you will stop to remember, the law is a weak paraphrase of a certain New Zealand enactment, where it was said to be successful and to have the approval of labor, and it has. But what are the conditions there where it had its birth, where it has had successful application, when contrasted with those places to where it has either been transplanted or it is proposed to transplant it? In the Government of New Zealand every agency, exclusive of the administrative, legislative, and judicial, is pro labor. It is a labor government from top to bottom, the only exception being the Governor General; but you are sufficiently conversant with the status of the English dependencies that are members of the imperial federation to know what real power a governor general exercises in such a colony. He is an interesting factor in a Crown dependency, but he exercises virtually no power in any vital question. It is a law that with all its agencies is actively favoring labor. How different a result can be obtained when you transplant it into Canada, or here, where every existing agency of government is passively or actively in great accord with the existing order. There is the difference. Every unseen influence that has been referred to as all the elements of invisible government are hopelessly against it. Its fair application to many of the agencies of a visible government have in the past been likewise utilized.

I do not know that I am a special alarmist in these things, but when a man has gone through the experience that I have in connection with questions of this character, I will admit that he does not acquire as high an opinion of the moral impulses and the active force of the consciences of a good many men as

he started out with. There may be a great many men who are in possession of one of the qualifications at least that Cæsar described as necessary for his wife to possess. They may be pure, but there is a great doubt if they are above reproach.

I want to place on record here the protest of every laboring man represented by these brotherhoods against the possible passage of anything that savors of making men stay at work during the period of what would happen here with the existing causes between the railways and their employees, assuming for the moment that a certain amount of disintegration would take place on the other side, or that they should play the game for all it is worth.

## NINE YEARS OF THE CANADIAN ACT<sup>1</sup>

Comment in the United States on the Canadian industrial disputes investigation act within the last six months has been at once abundant and diverse. "The wisest and most successful labor legislation anywhere adopted," Charles W. Eliot wrote of it. "A false step, reactionary, un-American," is the verdict of Samuel Gompers on its application to this country. These two remarks typify the discussion that has been going on since President Wilson first recommended to Congress that it pass an act similar in principle to the Canadian law.

In the dominion, as in the United States, opinion is divided. As in this country, public officials and employers are lined up in favor of the act; but, contrary to the status of opinion in this country, organized labor is not unanimous in condemning it; nor do those groups of workers in Canada who criticize the act, follow the same line of argument as their fellow workers in this country.

Interested citizens with hardly any exception approve the law. "The act has not been a panacea," said an editor of a large Canadian newspaper, "but it is a pretty good thing. It postpones the occurrence of a strike and gives sober-minded people a chance to exert moral influence in bringing the two parties to an amicable settlement." "The act is based on the principle of arbitration," declared a prominent prelate, "and,

<sup>1</sup> The experience with Compulsory Investigation and its application to the United States. Ben M. Selekman. Survey 37:746-54., March 31, 1917.



therefore, is a very fine thing. It tries to do away with the strike altogether, because it brings the employer and employee together and in this way helps toward an understanding between them before a strike may occur."

The degree of public approval accorded the act can be measured effectively by the attitude of political parties. The Liberal Party is responsible for its existence, but the Conservative Party, now in power, has declared, through the minister of labor, that it will not repeal the law in spite of some objection from organized labor. It intends, rather, to amend and perfect it in order to insure more equitable and effective operation.

Executives of public utility companies reinforce the general argument of public men with their own first-hand experiences. "The act is all right," declared a representative of the Shipping Federation of Canada, "because it prevents hasty action," and he went on to explain how it has helped to maintain a peaceful relationship between longshoremen and shippers in Montreal.

"Now, suppose two or three labor leaders come in here," said an executive of a large railroad, illustrating the benefits of the act, "and they have a thousand men behind them. They put certain demands up to us and say: 'Here, you, give these to us or we'll strike by such and such a time.' Well, we can say to them: 'There is a disputes act on the statutes; you'll have to apply for a board or violate the law,' and thus they are prevented from taking precipitate action against us.

"We had a recent case," he continued by way of concrete illustration. "The men demanded certain increase in their wages, and we informed them that we could not grant the rates desired. They then applied for a board and the report of the board was in their favor. For a time we hesitated to accept the report. But after considering everything—the condition of the labor market, etc., we decided to accept the award, because we knew that if the men struck, they would win. That's the beauty of the act. It gives us a chance to think over and consider all these things."

Mining operators, on the other hand, while commending its principle, complain that the act does not work equitably for them, because the penal clauses cannot be enforced against their employes when the latter violate the law.



So far as labor is concerned, the Canadian Federation of Labour has gone definitely on record as not only approving the law but favoring an extension of its provisions. At its last convention a resolution was adopted favoring compulsory awards. This body is, however, a small organization; its membership consists of about 7,000. The international unions, on the other hand—those affiliated with labor organizations in this country—number over 100,000 wage-earners. We must look to the body representing these unions, the Trades and Labour Congress, which is affiliated with and corresponds to the American Federation of Labor and to the railway unions, for a more representative body of opinion.

The maintenance-of-way employes and railroad telegraphers, who both singly and jointly have had the greatest experience with the act, are most enthusiastic proponents of it. So much are they in favor of it that, in 1912, they severed their affiliation with the Trades and Labour Congress because, in 1911, the latter went on record as desiring its repeal.

"As one who has had possibly the greatest experience with the act . . .," A. B. Low, the former president of the Order of Maintenance-of-Way Men wrote in 1914, "I do not think it would be right for me to let an opportunity go by of saying a good word for the act. . . . We have invoked [it] in nine cases . . . in which, when conferences between the officials and the representative of the employes failed to reach an agreement, a board was applied for an award made and accepted. . . . That our organization on both sides of the line knows by practical experience the benefit of the act may be judged by the fact that, at the Atlanta convention of the American Federation of Labor, our delegates introduced a resolution asking that similar legislation be advocated . . . and passed upon by the Senate and Congress of the United States; and that, I am sure, is the opinion of our membership still."

A prominent Canadian official of the Order of Railroad Telegraphers spoke to me in the same vein:

"I feel that the act has been of distinct advantage to our organization. We have always secured favorable results by reference of disputes to boards. It has been especially helpful in case of small railroads. Last year, I negotiated twenty trade agreements. The existence of the act with its threat of publicity was a great help to me in getting these agreements. In not one case did I have to take a strike vote, while officials of my organization in the states had to take many strike votes in their efforts to get similar agreements."

The Brotherhood of Locomotive Firemen and Enginemen in Canada is friendly to the principle of the act, but desires some changes in it.

"Certainly in the case of public utilities," a prominent official of the Dominion Legislative Board of this union explained, "the public interest is so vital that there ought to be an investigation before a strike or lock-out shall occur and the public ought to have an opportunity to acquaint itself with the facts. I am absolutely opposed to compulsory arbitration.

That robs the workers of all their strength. But compulsory investigation is different. . . . It may be that the disputes act has injured the interest of the workers. But that has nothing to do with the principle of the act. If there has been unfairness in its operation, the law ought to be amended."

The Brotherhood of Locomotive Engineers on the other hand, is a most bitter opponent of the act. Its legislative board expressed itself in no unmistakable language last November in this resolution: "That this board do all in its power to have the industrial disputes investigation act wiped off the statute books."

"The opinion against it was practically unanimous," an official of this board explained. "While some of the men spoke of some minor benefits, yet all of them thought that there were no real benefits from the operation of the act. It simply caused a lot of delay and expense. Many times, when an adjustment committee would go to the railroad manager and say that they wanted to negotiate a new agreement, the manager would simply say: "Go and apply for a conciliation board under the disputes act."

The Trades and Labour Congress, which includes within its membership the other craftsmen coming within the scope of the act, such as miners, machinists and shopmen employed on railways, street-car employes and longshoremens, also adopted an unfavorable resolution at its convention last November: "That we go on record as opposing the Lemieux [disputes] act in its entirety." This is a change from the original attitude of this body. When the act was first introduced in Parliament, it had the endorsement of the president of the congress, who was a member of Parliament, and in the convention of that year the principle of the bill was endorsed by a vote of eighty-one to nineteen. In every year following 1907 until 1911, amendments were asked for to improve the administration of the law. In 1911, for the first time, the organization went on record as desiring its repeal, by adopting the following resolution unanimously:

#### *Repeal Asked for by Labor*

"While this congress still believes in the principle of investigation and conciliation, and while recognizing that benefits have accrued at times to bodies of workmen under the operation of the Lemieux [disputes] act, yet in view of decisions and rulings and delays of the Department of Labour in connection with the administration of the act, and in consequence of judicial decisions like that of Judge Townsend, in the province of Nova Scotia, determining that feeding a starving man on strike [i.e., giving strike benefits] contrary to the act, is an offence under the act: Be it resolved, that this congress ask for the repeal of the act."

In 1912 the resolution adopted in the previous year was repeated by the labor congress. In 1913, 1914 and 1915, the

congress modified its position and went on record as desiring amendments, but in 1916, after long and heated discussion, they asked again for the repeal of the law.

"The principle of the act is all right," one prominent union official remarked in explaining the last action of this body, "but you can boil it all down to a question of administration. The minister of labour has refused to establish boards in one or two cases and that men feel that he is not administering the law in their favor."

"The delegates were so worked up over their grievances," writes a prominent representative of organized labor, also referring to the resolution "that they were in no mood to distinguish between the principle of the act and its administration."

The extent to which this is true can be inferred from the fact that the delegates rejected, without calm consideration or criticism, the measure drafted by their own solicitor as a substitute for the present one, in order to meet the objections previously raised by them.

Representatives of this organization, together with members of the railway labor unions, complain about the difficulty of securing a report favorable to labor.

"The very personnel of the boards are against the interests of the workers," said an official of the Machinists' Union. "The chairman casts the deciding vote on these boards. In ninety-nine out of one hundred cases, the two members appointed by the employer and the men cannot agree upon a mutually suitable person. The minister of labor has to choose him, and he usually selects a judge or some professional man whose point of view is capitalistic and who has no sympathy for the working class. As a result, from the very beginning the chances are against getting a favorable decision for the workers. The chairman almost invariably lines up with the representative of the employer."

It is interesting and significant that hardly any of the Canadian trade unionists advance the argument heard in this country against President Wilson's measure—that such a law means compulsory servitude for the wage-earners. On the contrary, most of them approve of the principle of the law, and direct their criticism purely against administrative defects. Their objections are chiefly that the minister of labor has refused to appoint a board on one or two occasions upon the application of a local union; that delays have often characterized the appointment and the hearings of the boards; and that it is difficult for them to secure a favorable decision.

#### *Procedure Under the Act—Conciliation*

To understand the objections of organized labor in Canada, we ought to know the nature of the procedure under the act. Contrary to the common conception in this country, the disputes act has operated not as a "compulsory investigation," but

as a "conciliation" measure. That is, the machinery of the law is used to bring together the opposing parties under public auspices and to adjust their difficulties. The compulsory features of the act which impose a penalty for violation and the definite rules of procedure have not been emphasized in its administration. For this reason, the use of stenographers at the hearings held in the presence of the boards has always been discouraged.

"Experience in the administration of the act," says the registrar of the boards appointed under the act, in one of his reports, "has appeared to show that it is more effectively operated when freed, so far as possible from the formal procedure suggestive of the ordinary judicial court. The taking of sworn evidence with stenographer's report has been particularly discouraged as having proved far from conducive to amicable adjustment of difficulties. . . . The most obvious virtue of the act lies . . . in bringing the parties together before three fellow-citizens of standing and repute . . . where a free and frank discussion of the differences may take place and the dispute may be threshed out. . . . Granting that such discussion and investigation take place before a strike or lockout has been declared and that the board acts with proper discretion and tact, the chances are believed to be largely in favor of an amicable adjustment. . . ."

The minister of labor prefers to have the law operate as a flexible, conciliation measure. He has taken the position that he will not establish a board when the cause of the dispute is the desire for recognition of a union on the part of the employees. He will not grant one when the workers of several employing companies apply for one, and when these companies will not agree upon a joint representative; and in cases where two unions may be organized and struggling for supremacy, if one of these organizations objects to such procedure.

The conciliatory spirit and flexible manner in which the act has been administered has probably been responsible for the delays of which organized labor complains. The official reports of the Canadian Department of Labor indicates that at times long periods have elapsed between the application for boards, their constitution and the rendering of their reports.

Ninety per cent of the boards established have been applied for by employees, whose custom is to recommend, usually, their representative in the application. Under the law, five days are given to the employers for the nomination of their representative. Five additional days are allowed the two members so appointed to select a chairman. The board should be completely established within fifteen days after receipt of application. The minister of labor has discretionary power to extend the length of these periods and generally does so.

Thus of the 161 boards that have been constituted in the last nine years, only sixty were established within the fifteen days. It took between sixteen and thirty-one days for sixty-six and between thirty-one and forty-six days for twenty-one boards to be constituted. For six boards, between forty-six and sixty-one days and for eight boards, more than sixty-one days elapsed.

The workers think their cause suffers also from long periods elapsing between the application for boards and the filing of their reports. For only twelve, or about 8 per cent of the disputes, was this period less than thirty-one days; for forty it was thirty-one to forty-six days; for thirty-six, between forty-six and sixty-one days; for eighteen, between sixty-one and seventy-six days. For an additional twenty-two, between seventy-six and ninety-one days; and for thirty, or about 19 per cent of the cases, more than ninety-one days, or three months, were consumed between the application for a board and the rendering of the final report. For three cases this information is not available.

In reply to the complaints of organized labor with reference to these delays, officials of the Department of Labour maintain that, considering the vast distances over which they have to operate, the boards are appointed quite promptly. If delays do occur, they are in accordance with the conciliatory spirit in which the act is administered.

Files in the department show that employers very frequently delay the procedure by asking for extensions of time. "But we don't want to ride rough-shod over a company," explained a prominent official of the department. "If they say that they will not appoint a representative, we tell them they must do so, and we try to reason with them that they should comply with the law. If they ask for an extension of time, we grant it to them and try to hurry the proceedings on as fast as possible."

How far these delays constitute a real grievance should be indicated to some extent by the character of the reports, when they are finally rendered. They should also show whether, as many trade union officials contend, it is difficult for labor to secure a favorable report because of the bias of the chairman, who, according to them, is chosen almost always by the minister of labor.



For the nine-year period ending March 31, 1916, there were altogether 161 fully established boards which conducted hearings.<sup>1</sup> In ninety-two of these disputes, or over one-half, the reports were unanimous. In only thirty-five cases did the employees' representative dissent from the majority report, and in twenty, the employers' representative dissented. In three cases both dissented from certain features of the reports, and in the remaining eleven either no decision was rendered or the nature of the report is not clearly indicated.

This record seems to show that the unions need to revise their claim that it has been difficult for them to secure favorable decisions.

In only twenty cases did strikes occur or continue after the dispute had come within the scope of the act. In some instances, moreover, a basis of collective bargaining has been established between employers and their men, leading to the signing of long-term agreements.

Nor is it correct to say that the representatives of employers and employees usually fail to agree on the third person to be nominated as chairman, thus leaving the choice to the minister of labor. In nearly one-half, or seventy-five, of the 161 boards which were fully established, the appointment was made on the recommendations of the two other members of the board. Although the proportion of failures to agree on the nomination of chairmen seems large, the facts do not seem to bear out the contention that the administration of the act has injured organized labor in Canada to any great extent.

So far, however, we have been considering the success of the act on the sole basis of those disputes which have been referred to it. It is here that the greatest danger of error lies. Most comments in this country on the operation of the act are based on the reports of the register of the boards. But these documents contain an account mainly of those disputes which have been referred for adjustment under the act; they do not give the complete facts about the frequency and the importance of all the strikes which have occurred in those industries coming within its scope. For this information we must go to the special report on strikes and lockouts (covering the years 1901-

<sup>1</sup> The total number of application for boards has been 191. In twenty-two cases no boards were established; in eight they were partially established.



12) and the subsequent annual reports issued by the Department of Labour.

This department was established in 1900 and has kept a record of industrial disputes which have occurred from January 1, 1901, to March 22, 1916. Because of war conditions there have been few strikes in Canada in the last two years (*ie.*, to March 31, 1916) and none of them has been serious. The disputes act became a law on March 22, 1907, and it will, therefore, be possible to compare the importance of strikes in fairly equal periods before and after its operation.

One difficulty must necessarily be encountered in using the comparative figures of the period before and after the act was passed as a measure of its success. It is all but impossible to say whether there would have been more or fewer strikes in the last nine years on public utilities were the act not in existence. Would those trade unions which have applied for boards have declared strikes more frequently, or would the usual methods of collective bargaining have averted the occurrence of industrial disputes? Or might not more strikes have been called by these organizations if the act did not provide a simple machinery for the adjustment of difficulties? These questions must be borne in mind in judging the degree to which this law has helped to establish industrial peace in Canada.

The particular problem for which the act was devised was industrial unrest in coal mines. In 1906 a prolonged strike occurred in the western coal fields threatening a fuel famine just when the usually severe winter was approaching. In the province of Saskatchewan the coal supply had been almost exhausted and the settlers scattered in the small towns and large prairies were facing the danger of freezing to death. The local authorities could do nothing to end the dispute and finally appealed for federal intervention. W. L. Mackenzie King, then deputy-minister of labor, was sent by the government and succeeded in bringing about a settlement. So much was he impressed with the suffering that a prolonged strike in this region might cause that he recommended the enactment of a law by means of which "all questions in dispute might be referred to a board empowered to conduct an investigation under oath, with the additional feature, perhaps, that such reference should not be optional, but obligatory, and pending the investigation and

until the board has issued its finding the parties be restrained, on pain of penalty, from declaring a lockout or strike."

*Working Days Lost in Mining Through Strikes*

	No. in thousands of days	Per cent. of days lost in all industries
1901 .....	56	9
1902 .....	10	8
1903 .....	440	36
1904 .....	10	4
1905 .....	114	53
1906 .....	188	52
1907 .....	203	33
1908 .....	16	2
1909 .....	711	82
1910 .....	377	53
1911 .....	1,593	79
1912 .....	89	8
1913 .....	703	55
1914 .....	169	39
1915 .....	17	16

*Persons Employed in Mining*

	No. in thousands	Per cent. of persons in all industries
1901 .....	37	2.1
1911 .....	64	2.4

The act was thus devised with particular reference to strikes in coal mines. A very important test of its efficacy is, therefore, its success in diminishing the social cost of industrial disturbances in this industry.

The period during which the act has been in operation has been practically simultaneous with the one in which the United Mine Workers have attempted to extend their organization in the important coal fields of Canada. These coal areas are the Crowsnest Pass region, which embraces the southwestern portion of Alberta and the eastern portion of British Columbia; Vancouver Island, on the extreme western end of British Columbia; and Nova Scotia, the extreme eastern portion of the dominion. From the point of view of production the eastern and western coal fields are almost of equal importance, but from the point of view of consumption a strike in the western coal fields causes much greater suffering than does one in Nova Scotia. The winters are much colder and the per capita consumption of coal higher in the western provinces. The trans-continental railroads are largely dependent on these western mines for their fuel; without them, it would be almost im-

possible to move the large wheat crops, the chief asset of the dominion.

### *Serious Strikes in the West*

It is in this western district, the Crowsnest Pass region, that the most serious coal strikes have taken place, both before and after the act was passed. The United Mine Workers of America entered Canada in 1902 and began organizing the miners in this region. In 1906 the first strike, under their auspices, the one which resulted in the passage of the disputes act, was called.

The agreement which brought this strike to an end expired on April 1, 1907. On April 9, these western miners applied for a board, and on April 16, while it was being constituted, they struck, this being the first violation to be charged against them. The board could do very little, but the deputy minister was again instrumental in bringing about a settlement. An important coal-mining strike also occurred in Nova Scotia—not under the auspices, however, of the United Mine Workers—over rates of pay. The total time losses for strikes in coal mines for the year, the first after the act was passed, amounted to 188,360 days, or 30.3 per cent of the total days lost in all strikes in Canada for the year.<sup>2</sup>

An agreement was signed in the Crowsnest Pass region for two years, but when it expired in March, 1909, a strike was again called “over the renewal of the working agreement in which were involved certain fine points of recognition relating to collection of union dues”—the check-off, in other words. Here the use of the act was not invoked until the strike had been on more than a month, and for the second time the miners violated the act. Neither party accepted the report of the board, but after being out on strike for three months, the men returned to work and an agreement extending to March 31, 1911, was signed.

In this same year, 1909, the United Mine Workers entered into a struggle to gain recognition in Nova Scotia. In this province there had been for a long time a local organization

<sup>2</sup> It is the number of men involved and the time wasted that makes a strike costly. The Canadian Department of Labour has reached a composite and most satisfactory measurement by multiplying the number of days in which the particular industry was idle by the number of men on strike and has thus worked out what might be called “men-days” or, as they are termed in the Canadian reports, “working days” lost.

of miners known as the Provincial Workmen's Association, and it appears that the strike resulted in a fight for supremacy between the two unions, with the operators favoring the local rather than the international organization.

The strike was centered in three places, Glace Bay, Springhill and Inverness. In the first two places the men applied for boards before they ceased working, but in Inverness the act was completely ignored. In the latter place the strike lasted for some months, at Glace Bay from July, 1909, to April 1910, and at Springhill from August, 1909, to May, 1911, a period of almost two years. In all three of these places riots occurred and "troops were stationed for a considerable time at each point." The United Mine Workers were defeated in this fight for recognition, but these serious strikes conducted by them were mainly responsible in 1909 for over four-fifths, and in 1910 for over one-half, of the total time losses of each year.

On March 31, 1911, the agreement signed in 1909 between the United Mine Workers and the operators of the Crowsnest Pass region expired, and 7,000 miners went out on strike again without applying for a board until the strike had been on for some time. "The crucial point, as in 1909, was the 'check-off.'" This strike, together with the one that was prolonged from 1909 in Springhill, N. S., and a few minor ones, made the total time losses in 1911 for strikes in coal mines 1,592,800 working days, or 78.9 per cent of all the working days lost in all strikes occurring during the year.

On September 16, 1912, the disputes act was completely ignored and a struggle began between the United Mine Workers and the mine operators of Vancouver Island. The chief demand was "recognition." This strike was not called off until August 19, 1914, nearly two years later. As in Nova Scotia, the United Mine Workers appear to have been defeated, but mainly because of this strike half a million working days were lost in 1913, or 45.7 per cent of all the working days lost in all of the strikes occurring during the year.

Thus the act does not seem to have an effective hold on the coal-mining industry of Canada. During 1916 some half-dozen strikes occurred in mines distributed practically over all of the coal fields of Canada. In only one case was the dispute referred to a board for adjustment. In the Crowsnest Pass region, in spite of the fact that the agreement signed between

the miners and operators did not expire until March 1, 1917, they struck twice last year, in complete defiance of the act, for a "war bonus" because of the abnormal rise in the cost of living.

In all for the six-year period before the act was passed thirty-eight strikes are recorded in coal mines, involving an average loss per year of 121,331 days or 26.4 per cent of all the working days lost in all strikes. In the nine-year period subsequent to the passing of the act, coal miners struck thirty-seven times involving an average loss per year of 419-223 days, or 46.9 per cent of all the working days lost in all strikes. Thus, in the latter period, in spite of the act, the average loss per year of working days in coal-mining strikes is about three and one-half times as great as before the law was passed, and the proportion of that total to all working days lost in all strikes almost doubled.

#### *The Act a Failure in Coal-Mining*

If we consider only the coal-mining industry, the conditions of which gave rise to the act, it has clearly failed to accomplish its purpose of averting strikes.

What proportion, it will be asked in criticism, do the miners constitute of the workers of Canada? If it is large, it should not be surprising that the mining industry is responsible for about one-half of the social cost of strikes. Unfortunately, the Canadian census does not give us this proportion each year. But it does give it for the years 1901 and 1911, and the facts show very clearly how serious the problem of industrial unrest has been in the coal mines of Canada. In 1901, 2.1 per cent and in **1911, 2.4 per cent of the total gainfully occupied population** were engaged in mining (both coal and metal). In other words, while the miners have constituted only about one-fiftieth to one-fortieth of the gainfully occupied population, and while this proportion has been nearly constant, they have been responsible for more than one-four of the working days lost in industrial disputes during the period 1901 to 1907, and for nearly one-half of the working days lost during the period 1907 to 1916.

The facts show that there have been strikes, and that there have been serious strikes in the coal industry in the period during which the act has been in operation. Although the act was intended primarily to prevent strikes in coal mines, it appears that it has failed to remove this sore spot from the in-



dustrial organism of Canada. But before reaching a definite conclusion on the basis of these facts, the difficulty of measuring the results of such a piece of legislation should be borne in mind. Might there not have been more strikes and more serious ones but for the act? As a partial answer there is the fact that Nova Scotia, where as much coal is mined as in the western coal area, has been comparatively free from serious strikes with the exception of the period during which the United Mine Workers were active in that province. It should also be recalled that this union conducted an extensive campaign of organization in Canada during the years 1903 to 1914. There is the additional fact that the Provincial Workmen's Association, which has about 5,000 miners in its membership, has observed the law and has worked under agreements, adopted as a result of the sitting of boards, in disputes between them and the coal operators. There is, however, also the fact that this organization always discouraged strikes even before the act was passed, and for this reason many of its members left it in 1909 to join the ranks of the United Mine Workers.

#### *Railroads and Other Public Utilities*

In Canada, as in this country, there have been few serious strikes on railroads. Only one may be charged to the railroad brotherhoods during the last sixteen years, and that was called in 1910, three years after the act was passed, when the trainmen and conductors on the Grand Truck rejected the majority report signed by their own representative. The railroad telegraphers have not struck once during this period, and the maintenance-of-way employes conducted one serious strike in 1901, six years before the statute was passed.

So unimportant has been the problem of railway disputes in Canada that, when the first draft of the act was introduced in Parliament, it did not include the railroads within its scope. Since the passage of the act, it is true that there have been seventy-five applications for boards in railway disputes, and in only six of these cases have strikes occurred. The question naturally arises, would the brotherhoods have called strikes more frequently had not boards helped to adjust the difficulties ensuing between them and their employers? This is not an easy question to answer, and yet it is fundamental. It is true also that the applicants must make a statement, when asking for a board, that if the dispute is not referred to a board or ad-



justed by it, a strike or lockout will, to the best of their knowledge, take place. Does this mean that sixty-nine railway strikes have been averted?

It is conceivable, in the first place, that employers reluctant to grant the demands of their men would refer them to the act, without going through the complete process of collective bargaining with them. In fact this is, as we have seen, one of the chief complaints of the strong unions. In the second place, few strikes occurred in the railroads prior to the enactment of the law. Finally, there is the fact that freight handlers and other unskilled and more or less unorganized workers employed by the Canadian railways have struck in violation of the act. Thus we find that during the last nine years [*i.e.*, 1907-1916] freight handlers have called sixteen strikes. In only three instances did they apply for boards, and that was after they had struck.

Most of the representatives of the railroad employes interviewed thought that it was not the act which was responsible for the maintenance of industrial peace on the railroads of Canada, but rather the reluctance of the brotherhoods to strike.

"I know that in the annual reports," remarked a representative of the locomotive engineers, "the Department of Labour says that so many disputes and that so many strikes have been referred to boards and averted, but that isn't so. As a matter of fact, as far as I can remember, since I have been in our organization, it never had a strike, even before the act was passed. It can't be said that there would be strikes if the statute did not exist. The railroad brotherhoods will go to any limits before calling a strike. We are constantly securing new agreements without applying for boards."

Similarly most of them contended that negotiations between them and the railroad companies would result in the securing of agreements did no legislation exist. The act for them has merely offered the machinery of collective bargaining different in form, but similar in spirit, to their usual practice before it was passed.

Street-car strikes show a decrease from ten for the period 1901 to 1907 to four for the period 1907 to 1916. As there have been twenty-one disputes referred to boards from this industry, and in only two instances did strikes follow, it does seem that the act has been successful in averting this serious and disastrous type of dispute. Longshoremen called twelve strikes during the first period and fourteen during the second.

The reports of the Department of Labour show for the first period—that is, before the act was passed—that 60, or 8.4 per cent of all disputes in all industries during that time occurred

in the industries grouped under the heading "general transport" (including railway employes, freight handlers, longshoremen, coal handlers, teamsters and others commonly employed in transportation). These involved an average loss of 68,684 working days per year, or 15 per cent of all the working days lost in all strikes. For the period after the act was passed, these reports give for the same industries 74 disputes, or 9.6 per cent of all occurring during the last nine years, involving an average loss of 87,776 working days, or 9.8 per cent of all working days lost in all disputes. If we should include strikes in railway construction work (a class of work to which the act has not yet been applied but which is nevertheless a public utility) the proportion of working days lost, while remaining the same for the first period, rises in the second to 15.7 per cent of the total time losses in all strikes. Considering the fact that the proportion of Canadian workers engaged in transportation increased from 4.8 to 9 per cent between 1901 and 1911, we find that the proportion of days lost from strikes, after the act was passed, actually decreased.

### *Results Among Public Utilities*

To summarize for all public utilities, 108, or 1.1 per cent of the 716 disputes recorded between January 1, 1901, and March 22, 1907, the period before the act was passed, occurred in those industries coming within its definition. Between March 22, 1907, and March 22, 1916, the period during which the statute has been in operation, 127, or 16.5 per cent of the total of 768 disputes occurred in these industries. Not only was there a slight increase in the proportionate number of disputes, but working days lost, the best measurement of the price the public pays for strikes, show a much greater increase. For the first period the average loss of working days per year due to strikes on public utilities was 201,502, or 43.9 per cent of the total time losses in all industrial disputes. For the second period the average loss of working days per year was 581,936 (including railway construction), or 65.1 per cent of the total time losses in all disputes.

Thus even when allowance is made for an increase in the proportion of workers employed, the social cost of strikes on public utilities has not been materially reduced. The analysis of these figures shows that there has been a marked increase in

loss of time through strikes on coal mines. Transportation before 1907 and since that time has been comparatively free from industrial disturbances.

### *Violations of the Act*

As a voluntary conciliation measure, the act has been very successful, but the most serious indictment against it as a "compulsory investigation" act has been the failure to impose penalties for violations. As we have already seen, strikes were not averted or ended in twenty or about one-tenth of the total 191 applications made for boards, but the most serious and important strikes occurring in the coal industry have been illegal; that is, cessation of work took place either before applying for boards or during proceedings or without invoking the act.

The Canadian act is a compulsory one mainly because penalties are provided for the calling of such illegal strikes, and the essential test of any compulsory law is the extent to which it is enforced. Yet it is in this very important aspect that the act has failed as a compulsory measure. The railway labor organizations are the only ones who have strictly observed the law. In their efforts to organize the coal miners of Canada, the *United Mine Workers* have conducted their most serious and costly strikes in violation of it. Freight handlers and other unskilled workers have frequently ignored it. Altogether, approximately eighty-four strikes on public utilities may be charged up as illegal, distributed approximately as follows: coal mines thirty-four; metal mines fourteen; railroads four; freight handlers sixteen; street cars two; longshoremen fourteen. This may not be an accurate estimate, since the reports do not list strikes as illegal and the facts can only be inferred from the data in two separate documents. That the violations of the law have not been unimportant can best be seen by the fact that the legal disputes in coal mines—the industry for which the act was primarily intended—involved, on the average, about 866 employees, while the illegal strikes involved, on the average, about 890 miners.

"If either an employee or an employer violates the law by causing a strike or lockout before an investigation has been held," commented Victor S. Clark in 1910, after having made a personal inquiry into the operation of the act, "he is practically immune from prosecution unless the other party to the dispute brings action in the court to punish him. In the districts where the law has been violated or evaded in these respects, there is a demand by the party that has suffered . . . that the government assume their prosecution. . . . "This situation . . . raises

an important question. If the men can strike with impunity in disregard of the law, what is the value of the latter in preventing or postponing strikes? Will the act not fall in abeyance except in those minor and less acute disputes where there is least call for . . . intervention? Has a law any force at all that operates only by the tolerance of law-breakers? It should be recognized that expediency must constantly be consulted in administering such an act, but it must constantly be consulted in administering such an act, but it would seem that the latter, though it may retain some residuary value as providing convenient machinery for public mediation must lose its distinctive character and its interest as experimental legislation unless some way is discovered to secure the observance of the clauses of deferring strikes and lockouts until an investigation is made. Unless these clauses are enforced, the law becomes an ordinary conciliation act, burdened by the discredit of its unenforced provisions."

The Department of Labour has taken the position that it will not prosecute for violation of the law. The registrar states the official position of the government in the *Canadian Law Times* for March, 1916:

"There has been also, in industries coming under the act, a considerable number of strikes in disputes which have not gone before a board for investigation. Work ceased in these cases without regard to the act. Many of the serious coal-mining strikes in western Canada during recent years have occurred in this way.

"What, it may be asked, becomes of the penalties prescribed for these apparent infringements of the statute? The reply must be that such cases have seldom gone to the courts. It has not been the policy of the successive ministers under whose authority the state has been administered to undertake the enforcement of these provisions. The parties concerned, or the local authorities, have laid information occasionally, and there have been in all eight or ten judicial decisions. The mining industry has been the chief delinquent in the matter of infringements, and there have been occasional derelictions on the part of the lower grades of transport or shipping labour; in the higher grades of railway labour the act has been well observed."

Several prominent Canadians were asked why the United Mine Workers, who have been responsible for the most serious violations of the act, have not been prosecuted. One of them, referring to the situation in the Crowsnest Pass region, gave a typical reply.

"In a case of this kind," he said, "the act is powerless; what can you do? Here are about 6,000 men, most of them foreigners. They don't understand the act. They don't care for it. What are you going to do? Fine them? Well, they won't pay. Put them in jail—if you could? The coal won't be mined. As far as I can see, any legislation in the world wouldn't prevent a strike from occurring under these circumstances."

The records of the Department of Labour show, up to March 12, 1915, only eight prosecutions. These have been relatively unimportant ones. Three were against employes of metal mines, an industry in which a strike, under ordinary circumstances, does not cause much suffering. Two were against operators of small coal mines for illegally declaring a lockout.

One case, in which three coal miners were charged with aiding in calling an illegal strike, was dismissed. In another, at Inverness, N. S., a union official was convicted for giving strike benefits to the men who had ceased working without applying for a board. In one case, four miners employed by a small coal company were each fined \$40 and costs or thirty days in jail.

### *Penalties Not Enforced*

The evidence does not seem to show that an extensive attempt has been made to force those responsible for the calling of the important, illegal strikes to pay the penalties provided by the act.

"The government has never laid particular stress upon the penalty end of it," W. L. Mackenzie King, the author of the law, explained in 1914 to the United States Commission on Industrial Relations, "the penalty part . . . has always been treated in much the same light as penalty for trespass. If the party affected wishes to enter an action to recover damages they may do so. . . ."

The analogy between the penalties provided in this statute and those placed in a trespass law does not appear to be sound. Trespass law is framed to protect the individual against any infringements that may be made on his property rights. The Disputes act was intended to protect, not an individual party, but the public against the suffering caused by strikes on public utilities. A violation of this law is a crime against the public. The person guilty of such a violation should be prosecuted at the instigation of the public authority charged with the administration of the act, in this case, the Department of Labour.

"In speaking of the Canadian act as a failure as a 'compulsory investigation' act," a former Canadian official writes on this aspect of its operation, "the alleged failure in compulsion is put down to the non-enforcement of *penalties*, whereas it was with a view to *compelling investigation* where labor wished investigation as a means of securing a redress of wrong, and not compelling penalties, that the act was framed. Let me explain the circumstances that led to the enactment of the compulsory investigation features of the measure. In the dispute in Alberta referred to in the article [*i.e.*, the one leading to adoption of the law], we spent nearly a week trying to get the parties together. We spent nearly another week finding out from each what they were prepared to do. Meanwhile, settlers and others were freezing in their homes. We had no powers other than that of a voluntary conciliator to fall back upon. Had we had legislation providing powers of *compulsory investigation*, we could have effected in two days what took nearly two weeks. It was this experience, and similar experiences in other strikes, which made us seek to get from Parliament powers of *compulsory investigation*, which meant to *labor, power at the expense of the state*, and with the machinery of the state back of it, to choose its own investigator, to summon witnesses, to compel the production of documents, to take evidence under oath, and to give to the public the fullest possible kind of a view of the case, including any injustices under which it might be



suffering. This is *the really important compulsory investigation feature* of the act, not the penalties which relate to strikes and lockouts. Never from the time the act was passed when I had to do with it as registrar or as minister was there a *single instance*, that I can now recall in which when this *compulsory investigation* feature was invoked on behalf of labor, that it was not enforceable and applied. As a compulsory investigation act—that is to say, investigation of a dispute under compulsion at the request of either of the parties, labor or capital—never once during the liberal administration did its provisions in this particular fail, and where investigation took place, the results were for the most part not only beneficial to the parties, but very greatly so to the public as well. I think the same has been true under the present administration."

## THE CANADIAN DISPUTES ACT<sup>1</sup>

For several years a number of well-meaning persons not members of labor organizations, have been advocating the passage of legislation looking toward compulsory investigation in labor disputes, particularly when applied to what is known as public utilities. The subject has been brought more forcibly to the attention of the public mind during the past year because of the controversy between the four railway brotherhoods and the railway companies. The advocates of compulsory investigation point out the wonderful success that has been obtained in Canada through the Canadian industrial disputes act, which law provides that no strike or lockout can take place until the government has had opportunity to investigate. Violators of the law are subject to fines and imprisonment.

To the casual reader compulsory investigation before a strike or lockout can take place, seems like a fair and equitable proposition and labor seems to have nothing to lose but much to gain under such a law. But the fact is that there is no equality of opportunity while investigation of a dispute is being made.

The mere statement that a strike or lockout can not occur pending investigation would imply that the responsibility on both sides was equal—such is not the case. Labor is prevented from striking and the employer is supposedly prevented from locking out his workmen, but the employer can close his plant for any reason sufficient to himself. He may hold that his operations are unprofitable. He may hold that it is impossible for him to secure material. He may hold that shipping facilities can not be secured. He may hold that new contracts are not available, and many other reasons may be given showing the neces-

<sup>1</sup>James O'Connell, Second Vice-President American Federation of Labor, in Survey. 37:756-7. March 31, 1917.



sity of either closing his plant or materially reducing his force of workmen, thus laying off the leaders and active men whom he thinks are responsible for the agitation to improve conditions of employment.

Again, the employer enjoys an opportunity under compulsory investigation to prepare for a strike. He has thirty days or longer for that purpose, while the workmen can in no way fortify themselves, their position being practically the same at the end of an investigation as at the beginning. There is, therefore, no equality of opportunity.

Organized labor in the United States has declared unalterably against compulsion of any kind in labor disputes. We hold that labor should have the right to quit the employer for any reason or no reason. We hold that this view is in conformity with the constitution of the United States which prohibits compulsory servitude. If a man is therefore compelled to work for any period of time against his will, it is a violation of the constitution of the United States. He could no more be punished for the violation of a law that would compel him to work against his will than the violators of the Canadian law have been punished. It is a well known fact that no attempt has been made to punish a single workman in Canada.

Thousands of workmen in Canada have violated the Canadian law, have gone on strike without notifying the government or requesting an investigation under the law. Others have struck while investigations were being made, and still others totally disregarded the awards and quit work. Not one of these workmen was fined or imprisoned. If all who violated the Canadian law were to be punished, the penal institutions of Canada would have to be enlarged.

To compare Canada with the United States in population or in the number of its industries is either treating the matter as a joke or is an attempt to impose upon the intelligence of our people. What might work fairly well in Canada with its population of approximately seven million, all of one nationality, would not work in the United States with its one hundred million population made up of all nationalities.

New York City is equal in population to the entire Dominion of Canada. More workmen are involved in one labor dispute in Greater New York than have been involved in all disputes and investigations that have taken place during the entire life of the

Canadian compulsory investigation law. More adjustments have been reached in disputes between the employers and the employes from voluntary mediation, conciliation and arbitration in Greater New York in one year than has been accomplished during the entire period the Canadian law has been in existence.

Organized labor believes in voluntary conciliation, mediation and arbitration. If the employers will meet their workmen in a spirit of fairness, concede them the right of association and representation, then strikes will be reduced to a minimum. But the employers want compulsory investigation only because it delays strikes, thus placing themselves in a position to fortify and prepare in every way to defeat the workmen in their demands. If this were not so why do they not meet their employes before the strikes or lockouts take place without having a law to compel them to do so? We decline to be a party to the enactment of any law that will for one moment take away from us the right to quit work for either real or imaginary causes.

The advocates of compulsory investigation say "there is a third party interested whose rights should receive consideration and protection." This third party is the public. If the public interested itself all the time, whether strikes were on or being threatened, this claim might hold true. The fact is, however, the public as a rule is not interested in the conditions under which workmen are employed, nor does it give much thought, if any, whether or not employers deal fairly or humanely with their workmen. It gives little thought to the question of the hours of labor, wages paid labor, or the conditions under which labor is employed. It interests itself little, if at all, in the proper inspection of factories, work shops, or mines. It cares little whether or not employers properly protect their machinery so that life and limb may be spared. It is not intensely interested in whether or not children are employed or in how they are employed. It makes little or no investigation as to the employment of women in factories, work shops, or sweated industries. Its only aim is to see the trains running so that it may not be inconvenienced in traveling from one city to another. It sees only the smoke coming from factories but never looks within. It sees only products coming from the mill but never stops to **think** how these products are produced. It sees only the coal coming from the mines but never asks the conditions under which it is being mined. The public may be an interested party but it is an extremely selfish one.

Why should organized labor cheerfully and willingly declare for voluntary servitude if it has practically nothing to gain and on the other hand much to lose? Under compulsory investigation the employer has all the advantage; unlimited time to prepare for the strike; right to discharge an employe; right of reducing his force, thus giving him an unequal advantage over his workmen. At best compulsory investigation and awards are only a compromise. This much, organized labor has always been able to secure. The public, as indicated above, is interested only in peace and does not care whether labor secures just treatment or not. Its slogan is, non-interruption and non-interference with business, commerce, finance and industry.

## THE RIGHT TO STRIKE<sup>1</sup>

The President desires the enactment of a law, not for the compulsory investigation of strikes, as many suppose, but for the investigation of the conditions that have brought the possibility or the probability of a strike, before it can take place. He desires the enactment of a law containing provisions similar to those in the Canadian Industrial Disputes Act, which make it illegal for a strike or lockout to be ordered by either employee or employer before the causes leading to it have been investigated by the government. At its last annual meeting the Canadian Trade and Labor Congress—the A. F. of L. of Canada—passed a resolution, almost unanimously condemning it for the reason that it pinches only one foot, binds only one side of the industrial struggle.

As such legislation actually works out, as is evidenced under the Canadian act, the employer invariably utilizes the period of delay that is specified for investigation to make preparations for a strike, hiring strike breakers, even importing them, in defiance of alien laws, so that when the period of involuntary service required under the act has elapsed he is in position, if the finding of the tribunal that has done the investigating upholds the contentions of the men to any degree, to repudiate the award, and to replace the forces of the men. In other words the act wholly and absolutely disposes of the tactical advantage that may lie with the em-

<sup>1</sup> Austin B. Garretson, President of the Order of Railway Conductors, Independent. 89:142-4. January 22, 1917.

ployee, who is, of course, in the very nature of a strike, the attacking party. Almost any strike illustrates the fact that there is a psychological moment for striking—one that is just as important in industrial warfare as in international warfare; just as important to a strike, often, as Japan's attack upon the Russian fleet was to the Russo-Japanese war. An act of this kind renders valueless the greater part of the weapons of the laboring man. It is on that account, primarily, that there is such widespread opposition to the enactment of laws of this character. In a word, it gives the employing side a great advantage.

Strategically, this advantage works to the good of the other side in railroad strikes especially. In the first place this is true because the railroads are adept at providing on short notice a mass of statistical evidence that often overwhelms investigators who are dealing with matters as complex as the compensation given railroad employees, and the conditions under which they serve. This evidence, moreover, is often so skillfully presented that it is deceptive. In the second place, the railroad brotherhoods have always gone forward on the theory and practise of compromise. In dealing with their employers they have been content with almost any appreciable proportion of that which was demanded. The willingness of the brotherhoods to compromise in this manner (growing out of the quasi-public character of the service) has often brought upon them the criticism of other crafts, some of whom condemn such willingness to exert every means toward settlement before appealing to the strike. This situation is reflected also in the fact that the experience of the railroad brotherhoods in strikes is very limited. The two great strikes in America, in 1893 and 1877, were not conducted under the auspices of the brotherhoods. There has been nothing approaching a general tie-up since.

The influence of every combination of men in this country who are employers of labor and of men who are in the conduct of enterprises commercial in their character, from which profit is derived, is lent to the enactment of a measure which will permit the continuance of profits without actually interesting themselves as to the facts of whether or not the welfare of the worker is safeguarded thereby. To such men

the acme of success is the continuance of profits or the increasing of them. And as what may be described as "the master class" is in control of most of the journals through which public opinion is expressed and by which public opinion is formed, it becomes readily apparent that the real will, the real desire and the real purpose of the great majority of the citizens of the republic rarely come to the surface at all and then only in fragmentary form. When industrial strife creates suffering and hardship, complaints as to these hardships seldom originate with those who suffer real hardship, but almost wholly from those who suffer nothing but diminution of profit. When there is a cessation of street car service in a great city the demand for resumption of peace, regardless of the terms of settlement upon which resumption may be founded, comes not from the working people who are compelled to walk or avail themselves of makeshift transportation, although they make up nine-tenths of those who supply the revenue of the street car companies, but almost wholly from those whose profit suffers by the inability of the purchasing class to continue to contribute to the endless chain of merchandizing or manufacturing. It is significant, in other words, that in these cases and in most other cases where the public interest is at stake a cry is always made in the name of the suffering public, when in fact the actual suffering public voices no protest and accepts the hardship as part of the heritage of men who labor.

This cry on behalf of the suffering public has been raised by the employing class in behalf of the enactment of the President's proposed bill.

What labor men resent in this proposed bill is the utilization of forces of any character whatsoever as weapons by one side or the other in a strike because labor has learned that the interest of the government is in peace and in profits. The police forces and the military, both state and national, instead of being utilized only for the purpose of seeing that each of the combatants in industrial strife uses only legitimate means, are almost invariably used as weapons for the purpose of furthering the interest of the employing class at the expense of the employee. Out of this long established practise grows the feeling on the part of the laboring man against the expansion of military power either upon the part



of the state or nation. Experience has taught the laboring man that military power is more often directed against him, to break down his resistance to oppressive conditions than against any outside foe. He therefore regards any legislation that makes possible any greater measure of oppression as directly inequitable, as, in fact, the worst form of preparedness. The correctness or incorrectness of this view on the part of labor is easily tested by one rule—by an examination of the arrests and convictions made in strikes for a class of offenses that if no strike were in existence would not be considered as offenses. This examination will show you how the peace power of state and city are pressed into industrial conflict against the weaker side. The same use of the supposed peace power is indicated by the existence of a large number of agencies which veil their real purpose under the name of detective associations, yet draw the larger part of their revenue from and find their principal field of activity in the furnishing of either professional strike breakers or armed guards, all of whom usually carry arms in utter defiance of the statutes of the various states in which their activities are exercised and against whom no legal action is taken.

Taking these facts in conjunction with those previously referred to, one need not seek further to find causes for the hostility of laboring men generally, both union and non-union, to the enactment of further legislation formulated for the purpose, as they believe, of further limiting the abilities of the working man to better his own condition.

The greatest difficulty that confronts final disposition of the strike between the man who has and the man who has not lies in our methods in dealing with it, and in our refusal to look issues squarely in the face. Indisputable evidence of the existence of that fundamental error is found in the fact that now, at a period of unprecedented prosperity in this very metropolis, one-twelfth of the funerals end at the potter's field. That almost unbelievable thing is fact.

It is needless to go further than this grewsome fact to establish the reason for the existence in the minds of men from the paths of labor as to the inadequacy of the present method of the distribution of the results of labor, and it is not difficult to understand that the mass of men who realize



that they have not received what they believe to be a fair recognition for their work will hold that democracy as exemplified in our government has been a failure. To men seeing things from this point of view it is inevitable that the theory of direct action would have great appeal in the face of the enactment of laws such as the president recommends, or of any law that adds to the machinery by which they believe that their rights are disavowed, their efforts nullified and their reward for toil made non-existent.

Much has been said and written about the surrender of government to an oligarchy of labor.

Capital has been made of the fact that Congress passed the Adamson law in the interest of a little group of 400,000 men, yet in the years gone by, legislation of the character of special privilege has been passed by the supreme legislative body at the behest and in the interests of groups of men composed of not one-one-hundredth part as many as are represented here. Millions of acres of land, the world's supply of standing timber, water rights, charters for utilities, deposits of coal, a supply of oil to serve the world, have been exploited by these very self-elected spokesmen of a long suffering public, now raising their voices in denunciation of an act humanitarian in its character, secured, it is true, through the efforts of 400,000 men, but insuring to the benefit of untold millions who now labor hours still out of all proportion to the stipend paid.

This proposed law is a step backward. The Adamson law was a step forward even though it has brought forth, as all laws do that are passed in the interest of others than the chosen few, a plentiful crop of criticism as to its unfairness, its injustice and its impracticability. It seems inevitable that in the future there must be more legislation of similar character, and less of the kind that guarantees to Shylock his pound of flesh. For the tendency of the age is toward recognition of the rights, not the privileges, of the common man, regardless of the powers of either invisible government or entrenched privilege, and the coming years surely will see the enactment of laws which will make impossible the condition that in a period of unrivaled prosperity contributes its benefits to the privileged few while the great body of citizens are in a more depressing condition because of high prices

than they were in preceding periods of depression. The Adamson law is such a law. Any law that deprives either side of the opportunity to exercise to the fullest every legitimate energy it possesses is not.

## THE OBJECTIONS OF ORGANIZED LABOR TO COMPULSORY ARBITRATION<sup>1</sup>

I have been requested to make a statement, wherein will be set forth the objections of organized labor to compulsory arbitration. The objections that I shall offer are specifically objections to compulsory arbitration, and may or may not include objections to the Canadian Act or similar laws upon the subject. You will notice that in my remarks I refer to the mental attitude of the arbitrator and state that as a basis of objection to arbitration; in fact, as evidence that arbitration is not an equitable manner of disposing of wage questions, because so much depends upon the mental attitude of the individual whose judgment is asked.

Railroad employees, and all people who work for wages, are opposed to so-called compulsory arbitration because it is but an ill-concealed effort on the part of the master class to deprive labor of its economic power. Under the guise of arbitration it is proposed to fix wages and working conditions by judicial compulsion.

Whenever and wherever by judicial process labor has been controlled, the employer has become a master and his employee a peon, serf or slave; for now, heretofore and hereafter the master class molds the mind of the judiciary. An arbitrator created by law is no less a judge, and where appointed by governmental authority becomes a dictator. Should his dictum be enforced by law his reign is no less that of a tyrant, though he may be a benevolent tyrant.

The American constitution may be cited as the first award of an arbitration of labor's rights. A majority of the colonies represented at the Philadelphia convention had abolished slavery. Most of the delegates regarded the slave institutions with abhorrence, yet the class consciousness of those same delegates

<sup>1</sup> W. S. Carter, President, Brotherhood of Locomotive Firemen and Enginemen. Proceedings. Academy of Political Science. 7:36-43. January, 1917.

caused them to refuse to interfere with the business interests of the employers in the remaining colonies where slave labor was a source of profit to the master class, and slavery was made an American institution by constitutional law. Until the civil war the American master class maintained the right of ownership in human beings.

It has not been long since railway employees favored legal measures for conducting voluntary arbitrations of wage disputes. The first federal arbitration law, known as the Erdman Act, was favored by railroad employees, although opposed as a dangerous precedent by workers in other crafts. Its successor, the present Newlands Act, was earnestly supported by representatives of railroad employees. Yet practically all railroad employees now look upon the law with fear and suspicion. They have learned by bitter experience that arbitration under the federal law is not fair to the employees. Through disastrous arbitrations they have discovered that this insidious class consciousness of business interests permeates our whole social structure. They have learned that in the selection of arbitrators only those of the master class, or sympathetic therewith, are eligible, and that a financial interest in the results of an arbitration better fits a man to serve as arbitrator.

If the eight-hour day, questions of wages and other such controversies are to be adjusted by arbitration, and there is an earnest desire to secure an unbiased award, no person connected with or in sympathy with the workers or the servant class would probably be appointed as a "neutral." No person connected with the employers or in sympathy with the master class could be truly neutral. Now that the master class provides princely sums for endowment and pensions in the great educational institutions, we find learned men summarily discharged for partisan leanings toward the servant class. Who is there left?

In the last arbitration conducted under the present law we found a gentleman selected as a neutral arbitrator whose social, business and political standing was such as gave credit and distinction to the proceedings. Subsequently, but before the award was made, we discovered that as trustee or director he had great financial interest in the matter he was to adjudicate. We learned that as director of one trust company he held \$12,500,000 of first mortgage bonds of one of the railroads party to the arbitration. In similar manner vast amounts of securities of the

railroads interested in the arbitration were owned or controlled by financial institutions with which he was officially connected.

Having knowledge of his utter lack of sympathy for the contentions of the employees, we filed a protest with the Federal board of mediation and conciliation against his continuance on the arbitration board. In reply we were informed that "a knowledge of that fact would have been favorable rather than otherwise to his appointment, and nothing has been brought to our notice since his appointment as an arbitrator which, in our opinion, disqualifies him as an arbitrator."

A public opinion has recently been created through the lavish expenditure of money by a *junta* of railroad financial interests, with their headquarters in this city, that makes it almost impossible for railroad employees to secure justice through any tribunal. In their efforts to convince the American people that railroad employees should not secure an eight-hour day, we have reason to believe that many millions of dollars were expended in an attempt to suborn the public press of the nation. We have evidence that in this publicity campaign these railroad financial directors employed the advertising pages of more than 3000 daily and more than 14,000 weekly papers. Before these millions were poured into the advertising coffers of these newspapers, many were friendly to our cause and a majority were at worst neutral. Almost immediately the editorial opinions of these same newspapers voiced sentiments similar to those expressed in their advertising pages. Thus we see that with an effort to impose an arbitration of wage disputes the railroads seek to create a public opinion that will win for them the decision thereunder. If arbitration is to be enforced against railroad employees, the law should prohibit the use of money by railroads in thus "packing the jury."

Aside from the fact that an arbitration award depends almost entirely upon the mental attitude of the so-called neutral arbitrator, an award favorable to employees is never applied justly. In any arbitration of a controversy between railroad employees and their employers the latter administer the award. What would be thought of the effectiveness of a court judgment enforced only by one of the litigants? Yet this is how arbitration awards are put into effect. What are intended to be wage increases are juggled into wage reductions by railroad officials, whose authority in the matter has never been questioned.

To sum up the objections of working people to any form of compulsory arbitration, I may brief them as follows:

(1) It is but a scheme by which the employer hopes to gain a mastery over his employees:

(a) By making strikes illegal, and thus depriving working people of their only economic power.

(b) By suppressing labor organization, through depriving them of the power to effect their purpose.

(c) By creating conditions of labor through judicial process, which process the master class always has influenced and always will greatly influence.

(2) It is but the expression of a selfish desire:

(a) To avoid the personal inconvenience incidental to all strikes, without regard to the injustice against which the workers are struggling.

(b) To avoid the financial loss to business interests engaged in production and transportation, regardless of the financial loss that may fall on the workers.

(3) It is but a symptom of the mental and moral degeneration through which all great and prosperous nations have passed when:

(a) Fundamental principles of individual liberty are forgotten.

(b) That for which the founders of liberty were honored becomes a social menace.

(c) The struggle for wealth overshadows all else, with consequent disregard for the rights of the working classes.

(4) It is a deliberate effort to deprive working people of their economic power:

(a) Through legislation nominally to preserve public peace.

(b) Through an artificial public opinion, largely created by those who control the public press.

(c) Through a presumption that for public convenience the federal judiciary will find a method of depriving all working people of their constitutional right to escape involuntary servitude except as punishment for crime.

This sums up the objections not only of organized labor, but of all labor against compulsory arbitration. Some of



these statements I believe to be extreme, perhaps not founded on fact; nevertheless many, many working people believe them to be true, and so believing, have a right to object vigorously to compulsory arbitration.

Pardon me if I draw a parallel. There is a general public demand that there be no strikes such as to bring upon the country what has been described as disaster; therefore, a law is sought to suppress industrial unrest that may result in these disastrous strikes. That is the theory of all monarchical forms of government with regard to political unrest. If that theory could have been enforced during the War of the revolution there would have been no United States of America. From a British point of view the social unrest that may result from a strike is not comparable with the political unrest that resulted in the formation of these United States. Any effort to secure political liberty would have been suppressed for identically the same reasons and with just as good argument as any effort to secure industrial liberty.

In America we have a democratic form of government whereby presumably every citizen votes his will. I am glad to say that we had many more citizens voting during the last election than ever before. I refer to the women. Therefore, in this country political unrest is perhaps satisfied by the opportunity to go to the polls and change that against which we protest or complain. But in monarchical forms of government, in past centuries, and still today in some countries, no such opportunity was given to the people. The governing class, who have always been the master class, truly believed that they were better qualified to legislate for the masses than were the masses themselves. In order to prevent the masses from attempting to legislate for themselves, they deprived them of all legislative authority; and in order to preserve the peace of the land they shot as traitors any persons who attempted to gain liberty beyond that which the government had accorded them. Now I submit to you that an effort in this country to deprive labor of its economic power to better its condition, receives its impetus in the same desire for peace that has held back the political rights of the human race for so many centuries.



There is a demand among all of us for peace. We would rather suffer untold wrongs than to engage in war, political or industrial. We are so constituted—and when I say “we” I mean the great mass of people—that we would rather see the workers deprived of that which is justly due them than be inconvenienced by a great strike that perhaps may prove a calamity. Whenever a nation reaches that point where the public convenience is used to suppress the individual rights of the people, then that nation has reached its zenith, and is on the downward path. If you and I are unwilling to suffer an inconvenience in order that someone may improve his industrial condition, then this nation has not fulfilled the purposes of those who created it.

If during the present period the American public will agree to an evasion of the thirteenth amendment of the constitution and without protest see railroad employees subjected to involuntary servitude, then I predict that the day is not far distant when these same peace-loving people will submit to a loss of political liberty rather than make militant protest against that loss. I have not lost faith in the judiciary, as many working people have. I yet believe that an attempt to enforce compulsory arbitration upon the working people of this country, even those that are employed by the railroads, will be frustrated by the Supreme Court of this land. I do not believe that the Supreme Court of the United States will permit an evasion of the thirteenth amendment of the constitution, even though it be for the preservation of industrial peace.

## BRIEF EXCERPTS

The Canadian law has no provision preventing employers from bringing in strike-breakers during the investigation.—*Outlook*. 94:648. March 26, 1910.

Twice as many labor disputes, involving five times ■ many employees, are settled by voluntary boards in New York City every year as all the disputes that the Canadian Compulsory Investigation Act has disposed of during its entire lifetime.—*Ralph M. Easley, Review of Reviews*. 55:190 February, 1917.

In my judgment the holding of any person in custody, whether in jail or by an officer of the law, against his will, for the purpose of compelling him to render personal service to another in a private business, places the person so held in custody in a condition of involuntary servitude forbidden by the constitution of the United States.—*Dissenting opinion of Justice Harlan in the Arago case.*

The compulsory feature of the Canadian Act has made more law breakers than all the jails in the Dominion of Canada could hold. In the nine years during which this act has been in existence, it has, according to official reports, dealt with disputes involving altogether only one hundred and forty six thousand employes, thirty two thousand of whom went on strike despite the law.—*Bellman*, 22: 35. January 13, 1917.

A major strike of railroad employees is a species of civil warfare, and it is doubtful if it is a thing which public policy should tolerate, but I think that we have not yet reached the point where punitive enactments would have had nationwide support or would have produced any better result than the machinery for investigation and full publicity which the [Esch-Cummins] Act provides.—*Ray Morris, World's Work*. 39: 547. April, 1920.

The right to strike for the purpose of improving working and living conditions has been recognized as a natural right to labor by all peoples from the dawn of civilization until comparatively recently. In the last analysis it is the only weapon with which labor can fight its battles for justice and human rights. It is the thing above all others which marks the distinction between industrial freedom and serfdom. Today, almost for the first time, it is seriously questioned.—*F. C. Canfield, President Iowa State Federation of Labor. Iowa Unionist*, January 15, 1920.

Moreover, arbitration may be voluntary or compulsory. Both the reference of the dispute to an arbitrator and the acquiescence in the terms of his award may be voluntary; or the reference may be voluntary and the award compulsory; or both the reference and the award may be compulsory. It is only arbitration providing for decree binding upon the disputants with which we are concerned. Arbitration with

voluntary award is a whim. An award unsatisfactory to either party becomes binding upon neither.—*Wilson Compton, American Economic Review*. 6:325. June, 1916.

If it came to me as an international officer of a union to recommend to the membership of our organization in Colorado as to whether they would continue employment until an investigation had been made by the state officials, thereby giving the employers an opportunity to recruit new forces to fill their positions, I should not hesitate one moment in saying, "Strike, and strike immediately; and we will then take up the question of any law which takes away from you your rights as free men." That frankly is our position in the matter. *Peter J. Brady, Secretary Allied Printing Trades Council. Proceedings of the Academy of Political Science*. 7:314. January, 1917.

The antistrike amendment recommended to Congress by President Wilson . . . is wholly to the advantage of the employers' class. A threatened strike would be held up indefinitely or at least until its force was spent in watchful waiting. Under this amendment a strike, if lawfully possible at all, would be robbed of its strategic advantages and doomed to inevitable defeat. A strike held up becomes as futile as a charge held up on a field of battle. But such a law could not be enforced against the will of the labor movement. All the laws and all the courts and governments on earth could not prevent a million organized workers from striking.—*Eugene V. Debs, Literary Digest*. 53:1582. Dec. 16, 1916

Mr. Gompers has said before the Committees in the Senate and in the House what he said in 1916, that anti-strike legislation would not be obeyed, could not be enforced and that he, as President of the American Federation of Labor, would not lend his influence for obedience to such a law. During the discussion of anti-strike legislation in 1916, Mr. Gompers said: "Law or no law, president or no president, such a law would not be obeyed." And testifying before a committee of Congress this year Mr. Gompers said: "With a full sense of my responsibility, I say that I should have no more hesitancy about participating in a strike after its passage than I do now. It wouldn't stop strikes; it would make law breakers."—*Law and Labor*. 1:23. December, 1919.

If men can strike with impunity in disregard of the law, what is the value of the latter in preventing or postponing strikes? Will the act not fall into abeyance except in those minor and less acute disputes where there is least call for government intervention? Has a law any force at all that operates only by the tolerance of the law-breakers? It should be recognized that expediency must constantly be consulted in administering such an act; but it would seem that the latter, though it may retain some residuary value as providing convenient machinery for public mediation, must lose its distinctive character and its interest as experimental legislation unless some way is discovered to secure the observance of the clauses deferring strikes and lockouts until after an investigation has been held. Unless these clauses are enforced, the law becomes an ordinary conciliation act, burdened by the discredit of its unenforced provisions.—*Victor S. Clark. Bulletin U. S. Bureau of Labor. 20: 19-20. January, 1910.*

The Canadian statute, does not proceed upon the theory that the Government will adjudicate the merits of the dispute or assume any responsibility for the adjudication of the dispute. The Canadian statute proceeds upon the theory that if all the facts are gathered together by a tribunal competent for that purpose, and the facts are published, then public opinion will correct the evil which may grow from a strike.

Sometimes that is true; sometimes it is not true. I only suggest that there have been more strikes upon the railways in Canada, notwithstanding the statute than there have been in the United States in the same length of time.

In the former hearings, when the committee was surveying the whole field, the representatives of labor were particularly critical of the Canadian statute. They have represented to the committee many times that the efforts of the Canadian government to suppress strikes through the investigating committee, and the publication of its reports, had been a total failure; and I rather accept their judgment with respect to that, in view of the instances which they furnish us of the number of strikes which had occurred under the statute.—*Senator A. B. Cummins. Congressional Record, December 18, 1919.*

ILLEGAL STRIKES AND LOCKOUTS AND PROSECUTIONS<sup>1</sup>

(In Canada in industries within the scope of the Industrial Disputes Investigation Act.)

Year	Total strikes and lockouts	Legal strikes and lockouts	Illegal strikes and lockouts	Prosecutions
1907 .....	41	2	39	9
1908 .....	19	■	18	■
1909 .....	19	■	16	■
1910 .....	14	4	10	■
1911 .....	25	■	24	■
1912 .....	32	2	30	■
1913 .....	21	2	19	■
1914 .....	6	■	■	■
1915 .....	11	1	10	■
1916 .....	34	■	33	■
Total....	222	18	204	23

<sup>1</sup> Bulletin 233, U. S. Bureau of Labor Statistics. p. 121:132-4.STRIKES AND LOCKOUTS<sup>1</sup>

(In Canada in industries within the scope of the Industrial Dispute Investigation Act.)

Year	Strikes and lockouts	Establishments affected	Employees affected	Days lost
1907 .....	41	105+	19,468	261,415+
1908 .....	19	19	12,754	446,706+
1909 .....	19	29	10,717	725,448
1910 .....	14	17	4,599+	458,204
1911 .....	25	135	14,806	1,684,573
1912 .....	32	59	11,152	179,629
1913 .....	21	27	4,183	736,019
1914 .....	■	6	1,382	173,737
1915 .....	11	20	5,598	38,548
1916 .....	■	78	15,949	134,368
Total....	■	495+	100,608+	4,838,647+

<sup>1</sup> Bulletin 233, U. S. Bureau of Labor Statistics. p. 24.

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